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Version No. 043
Residential Tenancies Act 1997
No. 109 of 1997

Version incorporating amendments as at 30 May 2007

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

Division 1—Introductory provisions

1 Purposes

The main purposes of this Act are—

- (a) to define the rights and duties of landlords and tenants of rented premises; and
- (b) to define the rights and duties of rooming house owners and residents of rooming houses; and
- (c) to define the rights and duties of caravan park owners, caravan owners and residents of caravan parks; and
- (d) to provide for the inexpensive and quick resolution of disputes under this Act; and

* * * * *

S. 1(e)
repealed by
No. 52/1998
s. 235(1).

- (f) to provide for a centralised system for the administration of bonds; and
- (g) to provide for the establishment of the Residential Tenancies Bond Authority; and

(h) to provide for the regulation of caravan parks and movable dwellings.

2 Commencement

- (1) Part 1 comes into operation on the day on which this Act receives the Royal Assent.
- (2) Subject to subsection (3), the remaining provisions of this Act come into operation on a day or days to be proclaimed.
- (3) If a provision referred to in subsection (2) does not come into operation before 1 January 1999, it comes into operation on that day.

3 Definitions

- (1) In this Act—

A rating, in relation to an item has the same meaning as it has in SAA MP 64-1995 Manual of assessment procedure for water efficient appliances as amended from time to time by Standards Australia for that item;

Authority means the Residential Tenancies Bond Authority established under this Act;

bond means—

- (a) an amount paid or payable by a tenant to secure his or her performance and observance of the tenancy agreement or any of the provisions of this Act relating to the tenancy agreement; or
- (b) an amount paid or payable by a resident to secure his or her performance and observance of any agreement relating to the residency or of any of the provisions of this Act relating to the residency;

Building Appeals Board means the Building Appeals Board under the **Building Act 1993**;

business day means a day other than a Saturday, Sunday or public holiday;

caravan means—

- (a) a movable dwelling; or
- (b) an immovable dwelling situated in a caravan park—

but, except in Part 14, does not include such a dwelling occupied in pursuance of a contract of employment;

caravan park means an area of land on which movable dwellings are situated for occupation on payment of consideration, whether or not immovable dwellings are also situated there;

caravan park owner means any person who is (either wholly or partly) the owner of a business which operates a caravan park;

caravan park provisions means any provisions of this Act to the extent to which they apply to a caravan park, a resident of a caravan park, a caravan park owner, a caravan owner, a caravan park mortgagee or a caravan mortgagee, but does not include Part 14;

common area means any area in which facilities are provided for the use of tenants or residents otherwise than as part of the rented premises, room or site;

determination in relation to the Tribunal—

- (a) includes order, direction, decision or declaration; and
- (b) if a determination is varied under this Act, includes that determination as varied;

Residential Tenancies Act 1997
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s. 3

S. 3(1) def. of
Director
substituted by
Nos 46/1998
s. 7(Sch. 1),
17/1999
s. 41(1).

Director means the Director within the meaning
of the **Fair Trading Act 1999**;

S. 3(1) def. of
*domestic
partner*
inserted by
No. 27/2001
s. 3(Sch. 1
item 10.1).

Director of Housing means the Director of
Housing incorporated under the **Housing
Act 1983**;

domestic partner of a person means a person to
whom the person is not married but with
whom the person is living as a couple on a
genuine domestic basis (irrespective of
gender);

dwelling means any structure that is designed to
be used for human habitation and that is
capable of being so used, and includes a
motor vehicle or trailer that is so designed
and capable;

S. 3(1) def. of
*exclusive
occupancy
right*
inserted by
No. 63/2005
s. 4(a).

exclusive occupancy right, in relation to a room
or rooming house, means a residency right of
a kind set out in section 92A;

facilities means—

- (a) land or buildings intended for use for
storage space or car parking;
- (b) laundry facilities;
- (c) cooking facilities;
- (d) recreational areas;
- (e) lifts;
- (f) garbage storage and disposal facilities;
- (g) bathroom, toilet and washing facilities;

-
- (h) appliances for heating or cooling premises;
 - (i) communications facilities;
 - (j) lawns, gardens and outhouses;
 - (k) stairways;
 - (l) any area designed or set aside for common use by tenants or residents—
provided for the use of a tenant or resident otherwise than as part of the rented premises, room or site;

fixed term tenancy agreement means a tenancy agreement for a fixed term;

guarantee includes indemnity;

health or residential service means—

- (a) a residential care service, State funded residential care service, health service establishment, denominational hospital or public hospital within the meaning of the **Health Services Act 1988**; or
- (b) premises used for an approved mental health service within the meaning of the **Mental Health Act 1986**; or
- (c) premises used for a residential institution, residential program or registered residential service within the meaning of the **Intellectually Disabled Persons' Services Act 1986**; or
- (d) premises used for a secure welfare service within the meaning of the **Children, Youth and Families Act 2005**; or

S. 3(1) def. of *health or residential service* amended by No. 48/2006 s. 42(Sch. item 30).

Residential Tenancies Act 1997
No. 109 of 1997
Part 1—Preliminary

s. 3

- (e) premises where accommodation is provided by a service agency for the purpose of delivering support services by that agency to a client of that agency;

S. 3(1) def. of *hearing* repealed by No. 52/1998 s. 235(2)(a).

* * * * *

hiring charge means the amount paid by a resident to a caravan owner to occupy a caravan;

invalid in relation to an agreement or guarantee, means void;

landlord means—

- (a) the person by whom premises are let under a tenancy agreement; or
(b) the person by whom the premises are to be let under a proposed tenancy agreement;

motor vehicle means a motor vehicle within the meaning of the **Road Safety Act 1986**;

movable dwelling means a dwelling that is designed to be movable, but does not include a dwelling that cannot be situated at and removed from a place within 24 hours;

owner in relation to rented premises, means the owner in fee simple of the premises;

S. 3(1) def. of *partner* inserted by No. 27/2001 s. 3(Sch. 1 item 10.1).

partner of a person means the person's spouse or domestic partner;

periodic tenancy agreement means a tenancy agreement other than a fixed term tenancy agreement;

personal documents means—

- (a) official documents; or
- (b) photographs; or
- (c) correspondence; or
- (d) any other document which it would be reasonable to expect that a person would want to keep;

principal registrar means principal registrar of the Tribunal;

S. 3(1) def. of *principal registrar* inserted by No. 52/1998 s. 235(2)(b).

public statutory authority means an office or body corporate or unincorporate established by or under an Act for a public purpose and includes a municipal council;

* * * * *

S. 3(1) def. of *Registrar* repealed by No. 52/1998 s. 235(2)(c).

rent means—

- (a) in relation to a tenancy agreement, the amount paid to a landlord by a tenant to occupy rented premises and use facilities and services; or
- (b) in relation to the residency of a rooming house, the amount paid to a rooming house owner by a resident to occupy a room and use facilities and services; or

S. 3(1) def. of *rent* amended by No. 63/2005 s. 4(b).

- (c) in relation to the residency of a caravan park, the amount paid to a caravan park owner by a resident to occupy a site and use facilities and services—

but does not include any amount for which a tenant or resident is liable under section 52, 57, 108, 109A or 162;

Rent Special Account means the Rent Special Account established under section 485;

rented premises in relation to a tenancy agreement to which this Act applies means the premises let under the tenancy agreement;

residency right means—

- (a) in relation to a room or rooming house, a right conferred by section 92; or
(b) in relation to a site or caravan in a caravan park or a caravan park, a right conferred by section 143;

resident means—

- (a) in relation to a rooming house, a person who, with the agreement of the rooming house owner, occupies a room as his or her only or main residence; or
(b) in relation to a caravan park, a person who occupies a site in the caravan park as his or her only or main residence and—
(i) who has obtained the prior written agreement of the caravan park owner to do so (whether that agreement was given in respect of that site or another site in the caravan park); or

S. 3(1) def. of *resident* amended by No. 63/2005 s. 4(c).

- (ii) who has so occupied any site in the caravan park for at least 60 consecutive days;

Residential Tenancies Fund means the Residential Tenancies Fund established under this Act;

room means a room in a building, where the room is occupied or intended to be occupied for the purpose of a residence by a person having a right to occupy the room together with a right to use in common with others any facilities in the building but does not include a self-contained apartment;

room capacity means the number of persons who may be accommodated in a room;

S. 3(1) def. of *room capacity* inserted by No. 63/2005 s. 4(a).

rooming house means a building in which there is one or more rooms available for occupancy on payment of rent—

S. 3(1) def. of *rooming house* amended by No. 45/2002 s. 27(1).

- (a) in which the total number of people who may occupy those rooms is not less than 4; or
- (b) in respect of which a declaration under section 19(2) or (3) is in force;

rooming house owner in relation to a rooming house which is leased to a person who conducts the business of operating the rooming house, includes the lessee;

rooming house provisions means any provisions of this Act to the extent to which they apply to a room, a rooming house, a resident of a room in a rooming house, a rooming house owner or a rooming house mortgagee;

self-contained apartment means a portion of a building which forms a self-contained residence, including kitchen and bathroom and toilet facilities, under the exclusive possession of the occupier;

S. 3(1) def. of *separately metered* amended by No. 45/2002 s. 86.

separately metered means that there is, in respect of rented premises, a room or a site, a meter—

- (a) that has been installed or approved by the relevant supplier of the utility; and
- (b) that measures, in relation to those premises or that room or site only, the quantity of a substance or service that is supplied to, or used at, those premises or that room or site;

service agency means—

- (a) a registered agency under section 23 of the **Intellectually Disabled Persons' Services Act 1986**; or
- (b) a provider of support services funded under the **Disability Services Act 1991**;

services includes the provision to a resident by a rooming house owner of meals, linen or room cleaning services;

S. 3(1) def. of *shared room* inserted by No. 63/2005 s. 4(a).

shared room means a room that is occupied by one or more residents with shared room rights;

S. 3(1) def. of *shared room right* inserted by No. 63/2005 s. 4(a).

shared room right means a residency right of a kind set out in section 92B;

site means a site in a caravan park;

spouse of a person means a person to whom the person is married;

S. 3(1) def. of *spouse* inserted by No. 27/2001 s. 3(Sch. 1 item 10.1).

support services means—

- (a) assistance with one or more of the following—
 - (i) bathing, showering or personal hygiene; or
 - (ii) toileting; or
 - (iii) dressing or undressing; or
 - (iv) meals; or
- (b) physical assistance for persons with mobility problems; or
- (c) assistance for persons who are mobile but require some form of supervision or assistance; or
- (d) development of independent living skills;

temporary crisis accommodation means accommodation provided on a non-profit basis for a period of less than 14 days;

S. 3(1) def. of *temporary crisis accommodation* inserted by No. 45/2002 s. 4.

tenancy agreement means an agreement, whether or not in writing and whether express or implied, under which a person lets premises as a residence;

tenant means—

- (a) the person to whom premises are let under a tenancy agreement; and
- (b) the person to whom premises are to be let under a proposed tenancy agreement;

this Act includes the regulations;

trailer means a trailer within the meaning of the **Road Safety Act 1986**;

Tribunal means Victorian Civil and Administrative Tribunal established by the **Victorian Civil and Administrative Tribunal Act 1998**;

urgent repairs means any work necessary to repair or remedy—

- (a) a burst water service; or
- (b) a blocked or broken lavatory system; or
- (c) a serious roof leak; or
- (d) a gas leak; or
- (e) a dangerous electrical fault; or
- (f) flooding or serious flood damage; or
- (g) serious storm or fire damage; or
- (h) a failure or breakdown of any essential service or appliance provided for hot water, water, cooking, heating or laundering by—
 - (i) a landlord in rented premises; or
 - (ii) a rooming house owner in a rooming house; or
 - (iii) a caravan park owner or a caravan owner in a caravan park or caravan; or

S. 3(1) def. of *Tribunal* substituted by No. 52/1998 s. 235(2)(d).

-
- (i) a failure or breakdown of the gas, electricity or water supply to rented premises, a rooming house or a caravan; or
 - (j) an appliance, fitting or fixture provided by a landlord, rooming house owner, caravan park owner or caravan owner that uses or supplies water and that is malfunctioning in a way that results or will result in a substantial amount of water being wasted; or
 - (k) any fault or damage that makes rented premises, a rooming house, a room or a caravan unsafe or insecure; or
 - (l) a serious fault in a lift or staircase; or
 - (m) any damage of a prescribed class;

Valuer-General means the Valuer-General under the **Valuation of Land Act 1960**;

visitor in relation to—

- (a) a tenant, means a person on rented premises or premises in which the rented premises are situated with the permission of the tenant; and
 - (b) a resident of a rooming house, means a person in a room or rooming house with the permission of the resident; and
 - (c) a resident of a caravan park, means a person on a site or in a caravan or caravan park with the permission of the resident.
- (2) In this Act, a reference to a landlord or a tenant is a reference to a landlord or a tenant under a tenancy agreement to which this Act applies.

S. 3(3)
inserted by
No. 27/2001
s. 3(Sch. 1
item 10.2).

- (3) For the purposes of the definition of *domestic partner* in subsection (1), in determining whether persons are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 275(2) of the **Property Law Act 1958** as may be relevant in a particular case.
- (4) Nothing in this Act prevents a rooming house from consisting of more than one building.

S. 3(4)
inserted by
No. 45/2002
s. 27(2).

4 Act binds the Crown

This Act binds the Crown, not only in right of Victoria, but also, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

Division 2—Application of Act to tenancy agreements and rooming houses

Subdivision 1—Application to tenancy agreements

5 Application of Act to assignees and transferees

- (1) This Act applies to a person to whom the rights and duties of—
- (a) a landlord under a tenancy agreement; or
 - (b) a tenant under a tenancy agreement—
- have been assigned or transferred or have passed by operation of law in the same manner as this Act applies to the person by whom the rights were assigned or transferred or from whom the rights and duties have passed by operation of law.
- (2) Nothing in subsection (1) operates to confer any rights under this Act on an assignee of a tenant if the assignment is not in accordance with this Act.

6 Tenancy agreements exceeding 5 years

This Act does not apply to a tenancy agreement that is a fixed term tenancy agreement if—

- (a) the fixed term exceeds 5 years; and
- (b) the agreement does not include a provision enabling the landlord or the tenant to determine the agreement by notice (otherwise than on the grounds of a breach of the agreement) before the end of 5 years after the agreement is made.

7 Premises used primarily as a residence

This Act applies to a tenancy agreement if the rented premises are used primarily for residential purposes even if a trade, profession or business is also carried on by the tenant on those premises.

8 Premises connected to premises used for trade or business

This Act does not apply to a tenancy agreement if the rented premises form part of a building in which other premises are let by the landlord to the tenant for the purpose of a trade, profession or business carried on by the tenant.

9 Principal place of residence

This Act does not apply to a tenancy agreement that is a fixed term tenancy agreement if—

- (a) immediately before the agreement was entered into, the rented premises were the landlord's principal place of residence; and
- (b) the fixed term is less than 60 days; and

-
- (c) the agreement states that—
- (i) immediately before the agreement was entered into, the rented premises were the landlord's principal place of residence; and
 - (ii) the landlord intends to resume occupancy of the premises on termination of the tenancy agreement.

10 Premises used for holidays

This Act does not apply to a tenancy agreement if the rented premises are ordinarily used for holiday purposes.

11 Farming and grazing

This Act does not apply to a tenancy agreement if the rented premises are included in or on other premises let to the tenant by the landlord that are for the time being used, or are ordinarily used, for the purpose of—

- (a) grazing, including agistment; or
- (b) farming, including dairy farming, pig-farming, poultry farming, fish-farming, tree-farming, bee-keeping, viticulture, horticulture, fruit growing or the growing of crops of any kind.

12 Contracts of employment

This Act does not apply to a tenancy agreement created or arising under the terms of a contract of employment or entered into in relation to such a contract.

13 Contracts of sale or mortgages

This Act does not apply to a tenancy agreement created or arising between the parties to a contract of sale or mortgage of the premises in accordance with a term of the contract or mortgage.

14 Prescribed premises and prescribed tenancy agreements

- (1) This Act does not apply to a tenancy agreement if the rented premises are prescribed premises or are included in a class of prescribed premises.
- (2) This Act does not apply to a tenancy agreement if the agreement is a prescribed agreement or is included in a class of prescribed agreements.

15 Certain provisions not to apply to tenancy agreements

- (1) Parts I to IVA of the **Landlord and Tenant Act 1958** do not apply in relation to tenancy agreements to which this Act applies.
- (2) Sections 137, 144, 145, 146 and 150 of the **Property Law Act 1958** do not apply in relation to tenancy agreements to which this Act applies.

Subdivision 2—Application to rooming houses

* * * * *

S. 16
repealed by
No. 45/2002
s. 5.

17 Room used by owner or owner's family or employees

The rooming house provisions do not apply to a room used or intended to be used as a residence by the rooming house owner, a member of the owner's family or an employee of the owner.

18 Self-contained apartments

S. 18(1)
amended by
No. 45/2002
s. 6(1).

- (1) Subject to subsections (2) and (3), the rooming house provisions do not apply to a self-contained apartment.
- (2) This Act applies to a self-contained apartment in a rooming house as if it were a room in that rooming house if the ratio of rooms to self-contained apartments in the rooming house is not less than 3 rooms for every self-contained apartment.
- (3) This Act applies to a self-contained apartment in a building declared to be a rooming house by the Minister under section 19(3) as if the self-contained apartment were a room in that rooming house.

S. 18(3)
inserted by
No. 45/2002
s. 6(2).

19 Minister may declare building to be a rooming house

- (1) An owner of a building—
 - (a) in which there is one or more rooms available for occupancy on payment of rent; and
 - (b) in which the total number of people who may occupy the rooms is less than 4—may apply to the Minister for a declaration that the building is a rooming house for the purposes of this Act.
- (2) The Minister, by notice published in the Government Gazette, may declare that building to be a rooming house for the purposes of this Act.
- (3) The Minister, at the request of the Director of Housing, may declare a building owned or leased by the Director of Housing and containing one or more self-contained apartments to be a rooming house for the purposes of this Act.

S. 19(3)
inserted by
No. 45/2002
s. 7.

- (4) A declaration under subsection (3) must be made by notice published in the Government Gazette.

S. 19(4)
inserted by
No. 45/2002
s. 7.

Subdivision 3—Application to tenancy agreements and rooming houses

20 Hotels and motels

- (1) Subject to subsections (2) and (3), this Act does not apply to a tenancy agreement or a room if the rented premises or room are situated in a motel or in premises licensed under the **Liquor Control Reform Act 1998**.
- (2) This Act applies to a tenancy agreement for rented premises situated in a motel or licensed premises if the tenancy is for a fixed term exceeding 60 days.
- (3) Subject to section 94(1), the rooming house provisions apply to a room in a motel or licensed premises if a person—
- (a) occupies the room as his or her only or main residence; and
 - (b) has so occupied any room in that rooming house for at least 60 consecutive days since the commencement of this section.

S. 20(1)
amended by
No. 74/2000
s. 3(Sch. 1
item 108).

S. 20(3)
amended by
No. 45/2002
s. 8.

21 Educational institutions

- (1) This Act does not apply to a tenancy agreement or room if the rented premises or room are, or are situated in—
- (a) any premises used as a school or for education and training purposes; or
 - (b) any residential premises ancillary to a school or an institution which provides education and training if those premises—

S. 21
amended by
No. 45/2002
s. 9(2) (LA
s. 39B(1)).

S. 21(b)
substituted by
No. 45/2002
s. 9(1).

- (i) are owned or leased by the school or the institution or formally affiliated with the school or institution; and
- (ii) are used to accommodate students or staff using the premises referred to in paragraph (a).

S. 21(2)
inserted by
No. 45/2002
s. 9(2).

- (2) For the purposes of this section, residential premises are formally affiliated with a school or an institution which provides education and training if a written agreement exists between the school or the institution and the owner or operator of the premises to provide accommodation primarily for students enrolled at the school or the institution or staff employed by the school or the institution.

S. 22
substituted by
No. 45/2002
s. 10.

22 Temporary crisis accommodation

This Act does not apply to a tenancy agreement or room if the rented premises or room are provided as temporary crisis accommodation.

23 Health or residential services

This Act does not apply to a tenancy agreement or room if the rented premises or room are, or are situated in—

- (a) a health or residential service; or
- (b) any premises ancillary to a health or residential service and primarily used to accommodate medical, nursing and other staff or any member of the family of a person using that service.

S. 23(b)
amended by
No. 11/2002
s. 3(Sch. 1
item 56.1).

Division 3—Exemptions by Tribunal

24 Application for exemption

- (1) A landlord or tenant may apply to the Tribunal for an order declaring that a provision of this Act does not apply to the tenancy agreement.
- (2) A rooming house owner, a caravan park owner, a caravan owner or a resident may apply to the Tribunal for an order declaring that a provision of this Act (other than Part 14) does not apply to the applicant.

25 Order of Tribunal

- (1) On an application under section 24(1), the Tribunal, after hearing the landlord and the tenant, may by order declare that the provision does not apply to the tenancy agreement.
- (2) On an application under section 24(2), the Tribunal, after hearing the rooming house owner, caravan park owner or caravan owner (as the case requires) and the resident, may by order declare that the provision does not apply to the applicant.
- (3) The Tribunal must not make an order under subsection (1) or (2) unless it is satisfied that in all the circumstances the application of a provision of this Act would occasion severe hardship to the applicant.
- (4) An order under subsection (1) or (2)—
 - (a) may be expressed to operate for a period stated in the order; and
 - (b) may be made subject to any conditions that the Tribunal thinks fit.
- (5) An order under this section has effect according to its terms.

**PART 2—RESIDENTIAL TENANCIES—TENANCY
AGREEMENTS**

Division 1—General requirements for tenancy agreements

26 Tenancy agreements to be in standard form

- (1) If a tenancy agreement is in writing, it must be in the prescribed standard form.
- (2) A landlord or tenant must not prepare or authorise the preparation of a tenancy agreement in writing in a form that is not in the prescribed standard form.

Penalty: 5 penalty units.

- (3) A failure to comply with this section does not make the tenancy agreement illegal, invalid or unenforceable.

27 Invalid terms

- (1) A term of a tenancy agreement is invalid if it purports to exclude, restrict or modify or purports to have the effect of excluding, restricting or modifying—
 - (a) the application to that tenancy agreement of all or any of the provisions of this Act; or
 - (b) the exercise of a right conferred by this Act.
 - (2) A term referred to in subsection (1) includes a term that is not set out in the tenancy agreement but is incorporated in it by another term of the tenancy agreement.
 - (3) A provision in a written tenancy agreement or any other agreement that requires a party to a written tenancy agreement to bear any fees, costs or charges incurred by the other party in connection with the preparation of the tenancy agreement is invalid.
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28 Harsh and unconscionable terms

- (1) A tenant may apply to the Tribunal for an order declaring invalid or varying a term of the tenancy agreement.
- (2) On an application under subsection (1), the Tribunal may by order declare invalid or vary a term of the tenancy agreement if it is satisfied that the term is harsh or unconscionable or is such that a court exercising its equitable jurisdiction would grant relief.
- (3) An order under this section has effect according to its terms.

29 Copy of agreement to be made available to tenant

- (1) A landlord must not give a tenant—
 - (a) a proposed tenancy agreement; or
 - (b) any other document which contains terms that are proposed to form part of the tenancy agreement—

to sign unless the landlord has given the tenant a copy of that proposed agreement or other document for the tenant's own use.

Penalty: 5 penalty units.

- (2) If a tenancy agreement or any terms of it are in writing signed by the tenant, the landlord must give the tenant a copy of the agreement or those terms signed by the tenant and the landlord within 14 days after the agreement is entered into or the terms are agreed.

Penalty: 5 penalty units.

30 Tenants with children

(1) A person must not—

- (a) refuse to let rented premises; or
- (b) instruct or permit that person's agent to refuse to let rented premises—

to another person under a tenancy agreement on the ground that the other person intends to live on the premises with a child.

Penalty: 5 penalty units.

(2) This section does not apply to—

- (a) premises proposed to be let by a public statutory authority or body corporate for which the authority or body receives financial assistance for the provision of housing for lone persons or childless couples under an Act or an Act of the Commonwealth; or
- (b) premises that are the principal place of residence of the person refusing or instructing or permitting that person's agent to refuse to let the premises to a person intending to live with a child; or
- (c) premises that by reason of their design or location are unsuitable or inappropriate for occupation by a child.

(3) A person who claims that premises are not, by reason of their design or location, unsuitable or inappropriate for occupation by a child may apply to the Tribunal for an order declaring whether or not the premises are unsuitable or inappropriate for occupation by a child.

(4) In this section *child* means a child under 16 years of age.

Division 2—Bonds

31 What is the maximum bond?

- (1) Subject to this Act, a person must not demand or accept in relation to a tenancy agreement a bond the total of which exceeds—
- (a) the amount of rent payable under the tenancy agreement for one month, unless an order is in force under section 33; or
 - (b) the maximum amount of the bond determined under an order in force under section 33.
- Penalty: 5 penalty units.
- (2) Subsection (1) does not apply to a tenancy agreement—
- (a) relating to premises that, immediately before the tenancy agreement was entered into, were the landlord's principal place of residence; and
 - (b) that states that fact; and
 - (c) that states that the landlord intends to resume occupancy of the premises on the termination of the tenancy agreement.
- (3) Subsection (1) does not apply to a tenancy agreement if the amount of rent payable under a tenancy agreement for 1 week exceeds—
- (a) \$350; or
 - (b) if a greater amount is prescribed for the purposes of this section, that greater amount.

32 Application to increase maximum amount of bond

A landlord who wishes to demand a bond in relation to a tenancy agreement or proposed tenancy agreement which exceeds the limit set under section 31 may apply to the Tribunal for an order determining the maximum amount of the bond.

33 Tribunal may determine maximum bond

On an application under section 32, the Tribunal may make an order determining the maximum amount of bond payable if it considers that it is reasonable to increase the bond having regard to—

- (a) the character, condition or quality of the goods, furniture or fittings let or provided under the tenancy agreement or proposed tenancy agreement; and
- (b) the character and condition of the rented premises.

34 Not more than 1 bond is payable in respect of continuous occupation

A person must not demand or accept a bond for a subsequent tenancy agreement under which a tenant continues in occupation of rented premises if that tenant—

- (a) has paid a bond for the initial tenancy agreement under which the amount of rent payable for 1 week does not exceed—
 - (i) \$350; or
 - (ii) if a greater amount is prescribed for the purposes of section 31, that greater amount; and

- (b) continues in occupation of those premises under the subsequent tenancy agreement.

Penalty: 10 penalty units.

35 Condition report

- (1) If a tenant pays a bond, the landlord must, before the tenant enters into occupation of the rented premises, give the tenant 2 copies of a condition report signed by or on behalf of the landlord specifying the state of repair and general condition of the premises on the day specified in the report.

Penalty: 5 penalty units.

- (2) Within 3 business days after entering into occupation of the rented premises, the tenant must return one copy of the condition report to the landlord—
- (a) signed by or on behalf of the tenant; or
 - (b) with an endorsement so signed to the effect that the tenant agrees or disagrees with the whole or any specified part of the report.

36 Condition report is evidence of state of repair

- (1) A statement in a condition report under section 35 is conclusive evidence, for the purposes of this Act, of the state of repair or general condition of the rented premises on the day specified in the report if the condition report is signed by or on behalf of the landlord and the tenant.
- (2) Subsection (1) does not apply to—
- (a) a state of repair or general condition that could not reasonably have been discovered on a reasonable inspection of the premises; or
 - (b) a statement with which the tenant disagrees under an endorsement on the report.

37 Certain guarantees prohibited

- (1) A person must not demand or require a tenant to obtain a guarantee for the performance of any of the tenant's duties in relation to the tenancy agreement if the tenant has paid or is required to pay a bond under a tenancy agreement.

Penalty: 10 penalty units.

- (2) This section does not apply to a tenancy agreement referred to in section 31(2) or (3).
- (3) A guarantee obtained in contravention of this section is invalid and unenforceable.

38 Maximum amount of certain guarantees

- (1) If a tenant—
 - (a) has not paid a bond or has not been required to pay a bond; and
 - (b) has obtained a guarantee in relation to a tenancy agreement—

the guarantee is unenforceable against the guarantor to the extent to which the amount guaranteed exceeds the amount of rent payable under the tenancy agreement for 1 month.

- (2) This section does not apply to a tenancy agreement referred to in section 31(2) or (3).

Division 3—Rents

39 Accrual of rent

For the purposes of this Act, rent under a tenancy agreement accrues from day to day and, subject to section 242, is recoverable or refundable accordingly.

40 Limit on rent in advance

- (1) A landlord must not require a tenant to pay rent under a tenancy agreement more than 1 month in advance.

Penalty: 10 penalty units.

- (2) Subsection (1) does not apply if the amount of rent payable for each week under the tenancy agreement exceeds—
- (a) \$350; or
 - (b) if a greater amount is prescribed for the purposes of section 31, that greater amount.

41 Rent in advance under weekly tenancy agreement

Despite section 40, a landlord must not require a tenant to pay rent under a tenancy agreement more than 2 weeks in advance if the period in respect of which rent is payable under that agreement is not more than 1 week.

Penalty: 10 penalty units.

42 Where and how is rent to be paid?

- (1) The rent under a tenancy agreement is payable—
- (a) if a place for payment of rent is specified in the agreement, at that place; or
 - (b) if no place is specified in the agreement, at the rented premises.
- (2) The rent under a tenancy agreement is payable in the manner (if any) specified in the agreement.

43 Receipts for rent

- (1) A person who receives a payment of rent from a tenant must give a written receipt in accordance with this section to the person making the payment—
- (a) immediately, if the payment is made in person; or
 - (b) if the payment is not made in person and a receipt is requested at the time of making the payment, within 5 business days of receiving the payment.

Penalty: 5 penalty units.

- (2) If a person receives a payment of rent from a tenant and a written receipt is not required to be given under subsection (1), the person must keep a record of the payment of rent until the earlier of—
- (a) the end of 12 months after receiving the payment; or
 - (b) if a tenant requests a copy of the record before the end of 12 months after making the payment, the provision of a copy of the record to the tenant.

Penalty: 5 penalty units.

- (2A) If a tenant requests a copy of a record under subsection (2)(b) before the end of 12 months after making the payment of rent, a person who keeps a record under subsection (2) must provide a copy of that record to the tenant within 5 business days after receiving the request.

Penalty: 5 penalty units.

- (2B) For the purposes of subsection (2), a record must contain information which enables the details specified in paragraphs (a) to (e) of subsection (3) to be identified.

S. 43(2)
substituted by
No. 45/2002
s. 11.

S. 43(2A)
inserted by
No. 45/2002
s. 11.

S. 43(2B)
inserted by
No. 45/2002
s. 11.

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- (3) A receipt under this section must be signed by the person who receives the payment and must state—
- (a) the name of the tenant and the rented premises; and
 - (b) the date of receipt; and
 - (c) the period for which payment is made; and
 - (d) the amount paid; and
 - (e) the fact that the payment is for rent.
- (4) The regulations may provide that a prescribed person is exempt from subsection (1), (2) or (3) subject to the conditions, if any, specified in the regulations.

44 How much notice of rent increase is required?

- (1) A landlord must give a tenant at least 60 days notice in the prescribed form of a proposed rent increase. S. 44(1)
amended by
No. 45/2002
s. 12(1)(a).
- (2) A notice of a proposed rent increase under subsection (1) may only provide for one rent increase.
- (3) The notice of a proposed rent increase must include a statement informing the tenant of the tenant's right under section 45 to apply within 30 days after the notice is given to the Director to investigate and report on the proposed rent. S. 44(3)
amended by
No. 45/2002
s. 12(1)(b).
- (4) A landlord under a fixed term tenancy agreement must not increase the rent before the term ends unless the agreement provides for a rent increase within the fixed term.
- (4A) A landlord must not increase the rent payable under a tenancy agreement at intervals of less than 6 months. S. 44(4A)
inserted by
No. 45/2002
s. 12(2).
- (5) A rent increase in contravention of this section is invalid.

45 Tenant may complain to Director about excessive rent

- (1) A tenant may apply to the Director to investigate and report if the tenant—
 - (a) considers that the rent under a tenancy agreement is excessive having regard to the fact that the landlord has reduced or withdrawn services, facilities or other items provided with the rented premises; or
 - (b) has received a notice of a rent increase and the tenant considers that the proposed rent is excessive.
- (2) An application under subsection (1)(b) must be made in writing within 30 days after the notice of the rent increase is given.
- (3) As soon as practicable after receiving an application, the Director must—
 - (a) carry out an investigation; and
 - (b) give a written report to the tenant and a copy of the report to the landlord.
- (4) The report of the Director must—
 - (a) include a statement informing the tenant of the tenant's right under section 46 to apply to the Tribunal for an order in respect of the proposed rent; and
 - (b) take into account the matters referred to in section 47(3).

46 Application to Tribunal about excessive rent

- (1) After receiving a report from the Director under section 45, the tenant may apply to the Tribunal for an order declaring the rent or proposed rent excessive.

(2) An application under subsection (1) must—

(a) be made within 30 days after the tenant receives the Director's report;

S. 46(2)(a)
amended by
No. 52/1998
s. 236(a)(i).

* * * * *

S. 46(2)(b)
repealed by
No. 52/1998
s. 236(a)(ii).

(3) If a tenant has received a notice of a rent increase and the tenant considers that the proposed rent is excessive, the tenant may, with the leave of the Tribunal, apply to the Tribunal for an order declaring the proposed rent excessive without receiving a report from the Director under section 45.

(4) An application under subsection (3) may only be made after the end of 30 days after the notice of the rent increase is given.

(5) The Tribunal may grant leave under subsection (3) if it is satisfied that there are reasonable grounds for the tenant's failure to request the Director to investigate and report under section 45.

47 What can the Tribunal order?

(1) If an application is made under section 46, the Tribunal may—

(a) make an order—

(i) declaring the rent or proposed rent excessive; and

(ii) directing that for the period specified in the order the rent must not exceed the amount specified in the order; or

(b) dismiss the application.

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- (2) If the Director's report has been obtained under section 45, the Tribunal must have regard to that report in determining the application.
- (3) The Tribunal must make an order declaring the rent or proposed rent excessive if it is satisfied that the rent or proposed rent is more than that which should reasonably be paid by a tenant having regard to—
- (a) the rent payable for comparable rented premises let under a tenancy agreement by a landlord, other than a public statutory authority, in the same locality;
 - (b) the state of repair and general condition of the rented premises;
 - (c) the cost of goods and services and facilities provided with the rented premises;
 - (d) any charges in respect of the rented premises for which the landlord is or may be liable under this Act or any other Act or the tenancy agreement;
 - (e) the cost of goods and services and facilities provided by the tenant under the tenancy agreement;
 - (f) any charges payable by the tenant under this Act or any other Act or the tenancy agreement;
 - (g) any work which the tenant has done with the landlord's consent or agreed with the landlord to do to the premises;
 - (h) any changes in the rent and the condition of the rented premises or facilities since the commencement of the tenancy agreement and since the last rent increase;
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- (ha) the number of rent increases (if any) in the preceding 24 months, the amount of each rent increase in that period and the timing of those increases;
 - (i) any valuation of the rented premises.
- (4) If the Tribunal makes an order under subsection (1)(a) in relation to rented premises, the landlord cannot require the tenant to pay an amount of rent greater than that specified in the order for a period of 12 months after the day on which the order comes into operation.

S. 47(3)(ha)
inserted by
No. 45/2002
s. 13.

48 Tribunal can order refund of rent

- (1) If the Tribunal makes an order under section 47, the Tribunal may include in the order a provision requiring the landlord to refund to the tenant an amount equal to the difference between—
- (a) the amount of rent payable under the tenancy agreement for the period commencing on the day that the tenant—
 - (i) applied to the Director to investigate; or
 - (ii) applied to the Tribunal under section 46(3)—and ending on the day immediately before the day on which the order is made; and
 - (b) the maximum amount of rent that would have been payable for that period if the order had been made on the day on which that application was made.
- (2) The order may specify the procedure for the refund to the tenant.

49 Tenant's goods not to be taken for rent

A person must not take or dispose of a tenant's goods on account of any rent owing by the tenant.

Penalty: 10 penalty units.

Division 4—Other charges

50 Application and holding deposits

A person who in respect of a proposed tenancy agreement receives a payment from a tenant as a sign of good faith must refund the payment to the tenant—

- (a) on the agreement being entered into, if it is entered into before the end of 14 days after the day on which the person received the payment; or
- (b) on the next business day after the end of that period, if the agreement was not entered into within that period.

Penalty: 5 penalty units.

51 Certain charges prohibited

- (1) A person must not demand or receive from a tenant a charge or indemnity for a charge in relation to the making, continuation or renewal of a tenancy agreement that is a premium, bonus, commission or key money.

Penalty: 10 penalty units.

- (2) A person must not demand or receive from a tenant under a proposed tenancy agreement a charge in relation to the inspection of the premises by a tenant.

Penalty: 10 penalty units.

- (3) A person must not demand or receive from a tenant a charge or indemnity for a charge in relation to—
- (a) the first issue of a rent payment card under a tenancy agreement; or
 - (b) the establishment or use of direct debit facilities for payment of rent under a tenancy agreement.

S. 51(3)
inserted by
No. 45/2002
s. 14.

Penalty: 10 penalty units.

52 Tenant's liability for various utility charges

A tenant is liable for—

- (a) all charges in respect of the supply or use of electricity, gas or oil in respect of the tenant's occupation of rented premises that are separately metered except—
 - (i) the installation costs and charges in respect of the initial connection of the service to the rented premises; and
 - (ii) the supply or hire of gas bottles;
- (b) the cost of all water supplied to the rented premises during the tenant's occupancy if the cost is based solely on the amount of water supplied and the premises are separately metered;
- (c) that part of the charge that is based on the amount of water supplied to the premises during the tenant's occupation if the cost of water supplied is only partly based on the amount of water supplied to the premises and the premises are separately metered;
- (d) all sewerage disposal charges in respect of separately metered rented premises imposed during the tenant's occupation of the rented premises by the holder of a water and

sewerage licence issued under Division 1 of Part 2 of the **Water Industry Act 1994**;

- (e) all charges in respect of the use of bottled gas at the rented premises in respect of the tenant's occupation of the rented premises.

53 Landlord's liability for various utility charges

(1) A landlord is liable for—

- (a) the installation costs and charges in respect of the initial connection to rented premises of any electricity, water, gas, bottled gas or oil supply service;
- (b) all charges in respect of the supply or use of electricity, gas (except bottled gas) or oil by the tenant at rented premises that are not separately metered;
- (c) all charges arising from a water supply service to separately metered rented premises that are not based on the amount of water supplied to the premises;
- (d) all costs and charges related to a water supply service to and water supplied to rented premises that are not separately metered;
- (e) all sewerage disposal charges in respect of rented premises that are not separately metered imposed by the holder of a water and sewerage licence issued under Division 1 of Part 2 of the **Water Industry Act 1994**;
- (f) all charges related to the supply of sewerage services or the supply or use of drainage services to or at the rented premises;
- (g) all charges related to the supply or hire of gas bottles to the rented premises.

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- (2) A landlord may agree to take over liability for any cost or charge for which the tenant is liable under section 52.
 - (3) An agreement under subsection (2) must be in writing and be signed by the landlord.

54 Landlord's liability for charges for supply to non-complying appliances

- (1) A landlord is liable to pay for the cost of water supplied to or used at the rented premises for as long as the landlord is in breach of section 69 or of any law requiring the use of water efficient appliances for the premises.
- (2) Subsection (1) applies despite anything to the contrary in section 52 of this Act and Part 13 of the **Water Act 1989** and Part II of the **Melbourne and Metropolitan Board of Works Act 1958**.

55 Reimbursement

- (1) If a landlord pays for anything for which the tenant is liable under section 52, the tenant must reimburse the landlord within 28 days after receiving a written request for reimbursement attached to a copy of the account and the receipt or other evidence of payment.
- (2) If a tenant pays for anything for which the landlord is liable under section 53 or 54, the landlord must reimburse the tenant within 28 days after receiving a written request for reimbursement attached to a copy of the account and the receipt or other evidence of payment.
- (3) Subsection (1) does not apply if there is an agreement to the contrary under section 53.

56 Landlord must not seek overpayment for utility charge

S. 56(1)
amended by
No. 45/2002
s. 15.

- (1) The landlord of separately metered rented premises must not seek payment or reimbursement for a cost or charge under section 55 that is more than the amount that the relevant supplier of the utility would have charged the tenant.

Penalty: 10 penalty units.

S. 56(2)
amended by
No. 45/2002
s. 15.

- (2) If the relevant supplier of the utility has issued an account to the landlord, the landlord cannot recover from the tenant an amount which includes any amount that could have been claimed as a concession or rebate by or on behalf of the tenant from the relevant supplier of the utility.
- (3) Subsection (2) does not apply if the concession or rebate—

S. 56(3)(a)
amended by
No. 45/2002
s. 15.

- (a) must be claimed by the tenant and the landlord has given the tenant an opportunity to claim it and the tenant does not do so by the payment date set by the relevant supplier of the utility; or
- (b) is paid directly to the tenant as a refund.

57 Director of Housing may impose service charge

- (1) The Director of Housing may impose a service charge on a tenant in rented premises let by the Director of Housing for any water, central heating, laundry or utility services or facilities made available to the tenant.
- (2) Subsection (1) only applies if it is not possible or practicable to accurately measure the use by the tenant of that service or facility.
- (3) A service charge may be increased by an amount or decreased in line with changes in the cost of providing the services or facilities.
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- (4) This section applies despite anything to the contrary in any tenancy agreement.
 - (5) In this section *Director of Housing* includes any incorporated body that receives financial assistance from the Director of Housing for the purposes of providing non-profit housing.

58 Indemnity for taxes and rates

- (1) A landlord under a tenancy agreement must indemnify the tenant for any amount recoverable from the tenant by a public statutory authority for rates or taxes payable under an Act for those rented premises.
- (2) Subsection (1) does not apply to—
 - (a) rates or taxes based solely on the amount of a substance or service that is supplied to the premises; or
 - (b) a fixed term tenancy agreement for a period exceeding 1 year.

Division 5—General duties of tenants and landlords

59 Tenant must not use premises for illegal purpose

A tenant must not use the rented premises or permit their use for any purpose that is illegal at common law or under an Act.

60 Tenant must not cause nuisance or interference

- (1) A tenant must not use the rented premises or permit their use in any manner that causes a nuisance.
- (2) A tenant must not—
 - (a) use the rented premises or common areas; or
 - (b) permit his or her visitors to use the rented premises or common areas; or

(c) otherwise permit the use of the rented premises—

in any manner that causes an interference with the reasonable peace, comfort or privacy of any occupier of neighbouring premises.

61 Tenant must avoid damage to premises or common areas

- (1) A tenant must ensure that care is taken to avoid damaging the rented premises.
- (2) A tenant must take reasonable care to avoid damaging the common areas.

62 Tenant must give notice of damage

A tenant who becomes aware of damage to the rented premises must as soon as practicable give notice to the landlord specifying the nature of the damage.

63 Tenant must keep rented premises clean

A tenant must keep the rented premises in a reasonably clean condition except to the extent that the landlord is responsible under the tenancy agreement for keeping the premises in that condition.

64 Tenant must not install fixtures etc. without consent

- (1) A tenant must not, without the landlord's consent—
 - (a) install any fixtures on the rented premises; or
 - (b) make any alteration, renovation or addition to the rented premises.
- (2) Before a tenancy agreement terminates, a tenant who has installed fixtures on or renovated, altered or added to the rented premises (whether or not with the landlord's written consent) must—

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- (a) restore the premises to the condition they were in immediately before the installation, renovation or addition, fair wear and tear excepted; or
 - (b) pay the landlord an amount equal to the reasonable cost of restoring the premises to that condition.
- (3) Subsection (2) does not apply if—
- (a) the tenancy agreement otherwise provides; or
 - (b) the landlord and the tenant otherwise agree.

65 Landlord's duty in relation to provision of premises

- (1) A landlord must ensure that on the day that it is agreed that the tenant is to enter into occupation, the rented premises are vacant and in a reasonably clean condition.
- (2) A tenant is not required to enter into occupation of premises which do not comply with subsection (1).
- (3) If premises do not comply with subsection (1), the tenant is not required to pay rent for the rented premises in respect of the period beginning on the agreed day on which the tenant is to enter into occupation of the premises and ending on the day on which the tenant actually enters into occupation.

66 Landlord must give tenant certain information

- (1) The landlord must on or before the occupation day give the tenant a written statement in a form approved by the Director setting out in summary form the rights and duties of a landlord and tenant under a tenancy agreement.

Penalty: 5 penalty units.

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- (2) If there is no agent acting for the landlord, the landlord must on or before the occupation day give the tenant—
- (a) written notice of the landlord's full name and address for the service of documents; and
 - (b) an emergency telephone number to be used in the case of the need for urgent repairs.

Penalty: 5 penalty units.

- (3) If there is an agent acting for the landlord, the landlord must on or before the occupation day give the tenant—
- (a) written notice of the agent's full name and address for service of documents and the agent's telephone number and facsimile number; and
 - (b) a written statement setting out—
 - (i) whether or not the agent can authorise urgent repairs; and
 - (ii) if the agent can authorise urgent repairs, the maximum amount for repairs which the agent can authorise; and
 - (iii) the agent's telephone number or facsimile number for urgent repairs.

Penalty: 5 penalty units.

- (4) A landlord must give the tenant notice in writing of any change in the information set out in subsection (2) or (3) before the end of 7 days after the change.

Penalty: 5 penalty units.

- (5) In this section *occupation day* means a day that is the agreed day on which the tenant is to enter into occupation of the premises.

67 Quiet enjoyment

A landlord must take all reasonable steps to ensure that the tenant has quiet enjoyment of the rented premises during the tenancy agreement.

68 Landlord's duty to maintain premises

- (1) A landlord must ensure that the rented premises are maintained in good repair.
- (2) A landlord is not in breach of the duty to maintain the rented premises in good repair if—
 - (a) damage to the rented premises is caused by the tenant's failure to ensure that care was taken to avoid damaging the premises; and
 - (b) the landlord has given the tenant a notice under section 78 requiring the tenant to repair the damage.
- (3) If a landlord owns or controls rented premises and the common areas relating to those rented premises, the landlord must take reasonable steps to ensure that the common areas are maintained in good repair.

S. 68(3)
inserted by
No. 45/2002
s. 16.

69 Landlord must ensure replacement water appliances have A rating

A landlord must ensure that if an appliance, fitting or fixture provided by the landlord that uses or supplies water at the rented premises needs to be replaced, the replacement has at least an A rating.

70 Locks

- (1) A landlord must provide locks to secure all external doors and windows of the rented premises.
- (2) A party to a tenancy agreement who changes any external door or window lock must as soon as practicable give a key to the lock to the other party.

(3) A tenant who wishes to change a lock in a master key system must obtain the landlord's consent before changing that lock.

(4) A landlord must not unreasonably withhold consent to the changing of the lock.

(5) In this section and section 71—

key of a lock means a device or information normally used to operate the lock;

lock means a device for securing a door or window or other part of premises;

master key system means a set of locks in which—

(a) each lock or sub-set of locks has a unique key; and

(b) one single key or master key can operate all the locks in the set.

71 Application to Tribunal to change locks without consent

(1) A tenant may apply to the Tribunal for a determination that the consent of the landlord to the changing of a lock is not required if—

(a) the landlord withholds consent; and

(b) the tenant believes that the withholding of the consent is unreasonable.

(2) If, after giving each party an opportunity to be heard, the Tribunal determines that consent is not required, the tenant may change the lock without the landlord's consent.

Division 6—Repairs and maintenance

72 Urgent repairs

- (1) A tenant may arrange for urgent repairs to be carried out to the rented premises if—
 - (a) the tenant has taken reasonable steps to arrange for the landlord or the landlord's agent to immediately carry out the repairs; and
 - (b) the tenant is unable to get the landlord or agent to carry out the repairs.
- (2) If the tenant carries out repairs under subsection (1)—
 - (a) the tenant must give the landlord 14 days written notice of the repairs carried out and the cost; and
 - (b) the landlord is liable to reimburse the tenant for the reasonable cost of the repairs or \$1000, whichever is less.
- (3) If urgent repairs are required to an item that uses or supplies water and that does not have at least an A rating, and that item cannot be repaired, the tenant may replace it with an item that does have an A rating.
- (4) This section does not apply to fixtures, furniture or equipment supplied by the tenant.

73 Application to Tribunal for urgent repairs

- (1) A tenant may apply to the Tribunal for an order requiring the landlord or the landlord's agent to carry out specified urgent repairs if—
 - (a) the tenant cannot meet the cost of the repairs; or

- (b) the repairs cost more than \$1000; or
 - (c) the landlord refuses to pay the cost of the urgent repairs if carried out by the tenant.
- (2) The Tribunal must hear an application under subsection (1) within 2 business days after the application is made.

74 Application to Director to investigate need for non-urgent repairs

- (1) A tenant may apply to the Director to investigate whether the landlord is in breach of a duty to ensure that the premises are maintained in good repair if—
- (a) the tenant has given the landlord written notice advising the landlord that repairs (other than urgent repairs) are required to the rented premises; and
 - (b) the landlord has not carried out the repairs within 14 days after being given the notice.
- (2) An application under subsection (1) must be in writing.
- (3) On an application under subsection (1), the Director—
- (a) must investigate; and
 - (b) may negotiate arrangements for the carrying out of repairs if the Director is satisfied that the landlord is in breach of the duty to maintain the rented premises in good repair; and
 - (c) must give a written report to the tenant.

75 Application to Tribunal for non-urgent repairs

- (1) A tenant may apply to the Tribunal for an order requiring the landlord to carry out specified repairs if—
 - (a) the tenant has received the report of the Director under section 74; and
 - (b) the tenant is still of the view that satisfactory arrangements have not been made for the carrying out of the repairs.
- (2) An application under subsection (1) must be made within 60 days of receiving the report of the Director under section 74.

S. 75(2)
amended by
No. 45/2002
s. 17.

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S. 75(3)
repealed by
No. 52/1998
s. 236(b).

* * * * *

S. 75(4)
repealed by
No. 52/1998
s. 236(c).

- (5) A tenant may apply to the Tribunal for an order requiring the landlord to carry out specified repairs without the report of the Director under section 74 if the tenant has not received that report within 90 days after the tenant applied for that report.

76 What can the Tribunal order?

- (1) The Tribunal may make an order requiring the landlord to carry out specified repairs if it is satisfied that the landlord is in breach of the duty to maintain the rented premises in good repair.
- (2) The order must specify the repairs and the time within which they must be carried out.

77 Payment of rent into Rent Special Account

- (1) If the tenant has given notice requiring repairs to be carried out to the rented premises, the tenant may apply to the Tribunal for an order authorising the tenant to pay the rent under the tenancy agreement into the Rent Special Account.
- (2) The Tribunal may make an order authorising the tenant to pay the rent into the Rent Special Account for a period specified by the Tribunal if it is satisfied that—
 - (a) a notice requiring the carrying out of repairs has been given to the landlord in accordance with this Act; and
 - (b) the landlord has failed to comply with the duty to carry out the repairs.
- (3) If an order is made under subsection (2)—
 - (a) the amount of the rent held in the Rent Special Account at the end of that period must be paid to the landlord; and
 - (b) on application by the landlord, the Tribunal may order that the whole or such part of the rent as it may determine be paid to the landlord before the end of that period, if it is satisfied that the landlord has fulfilled or is fulfilling the landlord's duty to carry out repairs to the premises.

78 Landlord may give tenant repair notice

- (1) A landlord may give a repair notice to a tenant if damage is caused to the rented premises because of a failure of the tenant to comply with section 61(1).

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- (2) The repair notice must be in writing and must state—
- (a) the nature of the damage; and
 - (b) that the damage was caused by the failure of the tenant to ensure that care was taken to avoid damaging the premises; and
 - (c) if the landlord wishes the tenant to repair the damage—
 - (i) that the landlord requires the tenant to repair the damage at the tenant's expense within 14 days after the giving of notice by the landlord; and
 - (ii) that if the tenant has not repaired the damage in a tradesman-like manner within that period, the landlord may repair the damage at the tenant's expense; and
 - (d) if the landlord wishes to repair the damage, that the landlord is undertaking the repairs and the tenant is liable for the reasonable cost of the repairs.

79 Landlord may do repairs and tenant liable for costs

- (1) If the landlord gives the tenant a repair notice under section 78 requiring the tenant to repair damage and the tenant has not repaired the damage in a proper and tradesman-like manner within 14 days after the giving of notice, the landlord may repair the damage at the tenant's expense.
- (2) If the landlord gives the tenant a repair notice under section 78 stating that the landlord is undertaking the repairs, the landlord may repair the damage at the tenant's expense as soon as practicable after giving the tenant the notice.

- (3) The tenant is liable to the landlord for the reasonable costs of repairs undertaken by the landlord under this section if the landlord gives the tenant particulars in writing of the cost of the repairs.

80 Declaration under Housing Act 1983 that house unfit for habitation

- (1) A landlord is in breach of section 68 if the rented premises are or are part of a house in respect of which a declaration under section 64 of the **Housing Act 1983** is in force.
- (2) A tenant is not entitled to exercise a right under sections 72 to 75 in respect of a breach resulting from a declaration referred to in subsection (1).

Division 7—Assignment and sub-letting

81 Assignment and sub-letting by a tenant

- (1) A tenant under a tenancy agreement must not assign or sub-let the whole or any part of the rented premises without the landlord's written consent.
- (2) A landlord must not unreasonably withhold consent to the assignment or sub-letting of the whole or any part of the rented premises.
- (3) An assignment or sub-letting of the whole or any part of the rented premises without the landlord's consent is invalid unless the Tribunal has determined that consent is not required.

82 Tenant may apply to Tribunal

- (1) A tenant may apply to the Tribunal for a determination that the consent of the landlord to the assignment or sub-letting of the whole or any part of the rented premises is not required if—
 - (a) the landlord withholds consent; and

(b) the tenant believes that the withholding of the consent is unreasonable.

(2) If, after giving each party an opportunity to be heard, the Tribunal determines that consent is not required, the assignment or sub-letting may go ahead without the landlord's consent.

83 Director of Housing may withhold consent in certain circumstances

For the purposes of this Division, it is not unreasonable for a landlord to withhold consent to an assignment or sub-letting of rented premises if—

- (a) the landlord is the Director of Housing; and
- (b) the ground for withholding that consent is that the assignment or sub-letting would disadvantage persons on a public housing waiting list.

84 Landlord cannot ask for fee for giving consent

(1) A landlord must not—

- (a) demand or receive a fee or payment for giving consent to the assignment or sub-letting of rented premises; or
- (b) refuse to consent to an assignment or sub-letting of rented premises on the ground that the tenant has refused to pay a fee or amount for the consent.

Penalty: 10 penalty units.

(2) If the tenant has paid the landlord a fee or amount for the consent to an assignment or sub-letting, the tenant may apply to the Tribunal for an order that the landlord refund to the tenant the amount of the payment.

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- (3) This section does not prevent a landlord from requiring the tenant to bear any fees, costs or charges incurred by the landlord in connection with the preparation of a written assignment of a tenancy agreement.

Division 8—Rights of entry

85 Entry of rented premises

A landlord or the landlord's agent has a right to enter rented premises together with any persons who are necessary to achieve the purpose of the entry—

- (a) at any time agreed with the tenant if the tenant has consented not more than 7 days before the entry; or
- (b) for a purpose set out in section 86, at any time between 8 a.m. and 6 p.m. on any day (except a public holiday) if at least 24 hours notice has been given to the tenant in accordance with section 88.

86 Grounds for entry of rented premises

- (1) A right of entry in respect of rented premises may be exercised if—
- (a) before giving notice of entry, a notice to vacate or a notice of intention to vacate the rented premises had been given and entry is required to show the premises to a prospective tenant; or
 - (b) the premises are to be sold or used as security for a loan and entry is required to show the premises to a prospective buyer or lender; or

- (c) entry is required to enable the landlord to carry out a duty under this Act, the tenancy agreement or any other Act; or
 - (d) entry is required for valuation purposes; or
 - (e) the landlord or the landlord's agent has reasonable grounds to believe that the tenant has failed to comply with his or her duties under this Act or the tenancy agreement; or
 - (f) entry is required to enable inspection of the premises and entry for that purpose has not been made within the last 6 months.
- (2) A right of entry for a purpose set out in subsection (1)(a) may only be exercised in the period of 14 days before the termination date specified in the notice to vacate or notice of intention to vacate.
- (3) Despite subsection (1), in the case of the first tenancy agreement entered into between a landlord and a tenant in respect of rented premises, a right of entry referred to in subsection (1)(f) may only be exercised after the end of the first 3 months of the tenancy.

S. 86(3)
inserted by
No. 45/2002
s. 18.

87 Manner of entry

A person exercising a right of entry under this Division—

- (a) must do so in a reasonable manner; and
- (b) must not stay or permit others to stay on the rented premises longer than is necessary to achieve the purpose of the entry without the tenant's consent.

88 What must be in a notice of entry?

A notice requiring entry must—

- (a) be in writing; and
- (b) state why the landlord or landlord's agent wishes to enter; and
- (c) be given—
 - (i) by post; or
 - (ii) by delivering it personally to the tenant between the hours of 8 a.m. and 6 p.m.

89 Tenant has duty to permit entry

A tenant has a duty to permit a person exercising a right of entry in accordance with this Division to enter the rented premises.

90 What if damage is caused during entry?

- (1) A tenant may apply to the Tribunal for an order for compensation if the landlord or the landlord's agent or a person accompanying them causes damage to the tenant's goods on the rented premises when exercising a right of entry under section 85.
- (2) If an application is made under subsection (1), the Tribunal—
 - (a) may make an order for payment of any compensation that it thinks fit if it is satisfied that damage was caused to the tenant's goods on the rented premises; or
 - (b) may refuse to make an order.

91 What if a person exercising right of entry fails to comply with Division?

- (1) If the landlord or the landlord's agent has exercised a right of entry and in doing so fails to comply with this Division, the tenant may apply to the Tribunal for an order restraining the landlord and the landlord's agent from exercising a right of entry under section 85 for a specified period.
- (2) If an application is made under subsection (1), the Tribunal—
 - (a) may make an order prohibiting the landlord and the landlord's agent from exercising a right of entry under section 85 (except for a purpose set out in section 86(1)(c) or (e)) during the period specified in the order if it is satisfied that it is reasonable to do so; or
 - (b) may refuse to make an order.

91A Offence relating to entering rented premises

A landlord or a landlord's agent must not, without reasonable excuse, enter rented premises otherwise than in accordance with this Division.

Penalty: 5 penalty units.

S. 91A
inserted by
No. 45/2002
s. 19.

**PART 3—ROOMING HOUSES—RESIDENCY RIGHTS AND
DUTIES**

Division 1—Residency rights

92 Residency right

S. 92
amended by
No. 63/2005
s. 5 (ILA
s. 39B(1)).

- (1) Subject to this Act, a resident has the right—
 - (a) to reside in the room that he or she occupies;
and
 - (b) to use the facilities in the rooming house.
- (2) A residency right may be an exclusive occupancy right or a shared room right.
- (3) A residency right is an exclusive occupancy right unless—
 - (a) the rooming house owner has given the resident a notice under section 92C specifying that the right is a shared room right before the resident commences occupation of the room; or
 - (b) the residency right becomes a shared room right under section 94B(2); or
 - (c) the residency right is deemed to be a shared room right under section 530.

S. 92(2)
inserted by
No. 63/2005
s. 5.

S. 92(3)
inserted by
No. 63/2005
s. 5.

92A Exclusive occupancy right

S. 92A
inserted by
No. 63/2005
s. 6.

- (1) An exclusive occupancy right gives a resident a right to exclusive occupancy of the room.
- (2) To avoid doubt it is declared that 2 or more residents may have exclusive occupancy of a room.

Example

Two domestic partners may share a room and have exclusive occupancy. A rooming house owner would not be able to introduce another person to share the room while the exclusive occupancy right exists.

92B Shared room right

S. 92B
inserted by
No. 63/2005
s. 6.

A shared room right gives a resident a right to occupy the room together with one or more other residents chosen by the rooming house owner.

Example

A resident takes up occupancy of a room after being given notice under section 92C that the resident is to have a shared room right. Later that week, without notice to the existing resident, another resident takes up occupancy of the same room under a residency agreement. Each resident has a shared room right.

92C Notice to resident of residency right

S. 92C
inserted by
No. 63/2005
s. 7.

- (1) A rooming house owner must give each proposed resident a notice in accordance with this section before the proposed resident commences occupation of a room.

Penalty: 5 penalty units.

- (2) The notice must—
 - (a) be in writing in a form approved by the Director; and
 - (b) specify whether the residency right is to be an exclusive occupancy right or a shared room right; and

- (c) state the date on which it is given; and
 - (d) state that it is given in accordance with this section.
- (3) If the residency right is to be a shared room right, the notice must also—
- (a) specify the room capacity of the room; and
 - (b) state that the resident will not be notified before another resident takes up occupancy of the room; and
 - (c) state that the rooming house owner will choose the other residents who will be permitted to take up occupancy of the room; and
 - (d) specify the rent payable by the resident for the shared room right and the rent that would have been payable by the resident if the right had been an exclusive occupancy right.

93 Rights cannot be assigned

The rights conferred on a resident of a rooming house by this Act are not assignable or transferable.

94 Power to enter tenancy agreements or other agreements

- (1) Nothing in this Act affects the right of a resident and a rooming house owner to enter into a tenancy agreement.
- (1A) If a tenancy agreement is entered into by a resident and a rooming house owner in respect of a room in a rooming house, the rooming house provisions do not apply to the occupation of that room by that resident while the tenancy agreement continues.

S. 94(1A)
inserted by
No. 45/2002
s. 28.

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- (2) A rooming house owner and a resident may enter an agreement (not being a tenancy agreement) specifying the terms and conditions of the resident's use and enjoyment of the rooming house.
- (3) A term or condition in an agreement under subsection (2) that is inconsistent with this Act or that purports to restrict, exclude or modify the application of or exercise of a right conferred by this Act is invalid.
- (3A) Despite subsections (1) and (1A), a resident cannot enter into a tenancy agreement with a rooming house owner in respect of a room unless the resident has or is to have exclusive occupancy of the room.
- (4) In this section, *resident* includes a proposed resident.

S. 94(3A)
inserted by
No. 63/2005
s. 8.

94A Harsh and unconscionable terms

- (1) A resident may apply to the Tribunal for an order declaring invalid or varying a term of an agreement referred to in section 94(2).
- (2) On an application under subsection (1), the Tribunal, by order, may declare invalid or vary a term of the agreement if it is satisfied that the term is harsh or unconscionable or is such that a court exercising its equitable jurisdiction would grant relief.
- (3) An order under this section has effect according to its terms.

S. 94A
inserted by
No. 45/2002
s. 29.

s. 94B

Pt 3 Div. 1A
(Heading and
ss 94B–94D)
inserted by
No. 63/2005
s. 9.

S. 94B
inserted by
No. 63/2005
s. 9.

Division 1A—Shared room rights

94B Consent required for increase in room capacity

- (1) A rooming house owner must not increase the room capacity of a room that is occupied by one or more residents unless—
 - (a) the rooming house owner has first given each existing resident of the room notice of the proposed increase in accordance with section 94C; and
 - (b) each existing resident of the room has consented to that increase in room capacity in accordance with section 94D; and
 - (c) each consent has taken effect.

Penalty: 5 penalty units.

- (2) If a resident who has an exclusive occupancy right consents under section 94D to an increase in room capacity, that residency right becomes a shared room right when that consent takes effect.

S. 94C
inserted by
No. 63/2005
s. 9.

94C Notice of increase in room capacity

- (1) A notice given by a rooming house owner under section 94B must—
 - (a) be in writing in a form approved by the Director; and
 - (b) state the date on which it is given; and
 - (c) state that it is given under section 94B; and
 - (d) state that the rooming house owner is seeking the consent of the resident to increase the room capacity of the room; and

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- (e) specify the total number of people who are proposed to be accommodated in the room; and
 - (f) state that if the resident consents to the increased room capacity of the room—
 - (i) the resident will not be notified before another resident takes up occupancy of the room; and
 - (ii) the rooming house owner will choose the other residents who will be permitted to take up occupancy of the room; and
 - (g) state the existing rent paid by the resident; and
 - (h) state the new reduced rent that will be payable by the resident if the resident consents to the increase in the room capacity of the room; and
 - (i) state that any consent of the resident must be in writing; and
 - (j) state that the resident may withdraw that consent at any time within the period of 3 days following the giving of the consent; and
 - (k) state that if consent is given, the consent will take effect at the end of the period of 7 days after—
 - (i) if there is only one resident of the room, the consent is given; or
 - (ii) if there is more than one resident of the room, the consent of the last resident is given; and
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s. 94D

- (1) state that when the consent takes effect—
 - (i) the increase in room capacity also takes effect; and
 - (ii) the new reduced rent also takes effect.
- (2) A notice given by the rooming house owner under section 94B ceases to have effect 14 days after it is given.
- (3) A notice given by a rooming house owner under section 94B is invalid if—
 - (a) it fails to state the new reduced rent payable by the resident or otherwise fails to comply with subsection (1); or
 - (b) the proposed room capacity of the room will exceed the number of persons permitted by law to be accommodated in the room.

S. 94D
inserted by
No. 63/2005
s. 9.

94D Consent of resident to increased room capacity

- (1) A resident who receives a notice under section 94B may consent to the increase in room capacity.
- (2) A consent must—
 - (a) be in writing; and
 - (b) must specify the increased room capacity to which consent is given; and
 - (c) be signed by the resident; and
 - (d) be dated with the date of signing.
- (3) A resident may withdraw a consent he or she gives under this section by giving written notice of that withdrawal to the rooming house owner within 3 days after the consent is given.

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- (4) A consent under this section to an increase in the room capacity of a room does not take effect until the end of the period of 7 days after—
- (a) if there is only one resident of the room, the consent is given; or
 - (b) if there is more than one resident of the room, the consent of the last resident is given.
- (5) A consent under this section is of no effect if the notice under section 94B is invalid.

Division 2—Bonds

95 Payment of bond

A rooming house owner may require a resident or proposed resident to pay a bond before the resident commences occupation of a room as a resident.

S. 95
amended by
No. 45/2002
s. 30.

96 What is the maximum bond?

A rooming house owner must not demand or accept a bond that exceeds the equivalent of 14 days rent.

Penalty: 10 penalty units.

97 Condition report

- (1) If a resident or proposed resident pays a bond, the rooming house owner must, before the resident or proposed resident commences occupation of the room as a resident, give the resident or proposed resident 2 copies of a condition report signed by or on behalf of the owner specifying the state of repair and general condition of the room on the day specified in the report.

Penalty: 5 penalty units.

S. 97(1)
amended by
No. 45/2002
s. 31(1).

S. 97(2)
amended by
No. 45/2002
s. 31(2).

- (2) Within 3 business days after commencing occupation of the room as a resident, the resident must return one copy of the condition report to the rooming house owner—
- (a) signed by or on behalf of the resident; or
 - (b) with an endorsement so signed to the effect that the resident agrees or disagrees with the whole or any specified part of the report.

98 Condition report is evidence of state of repair

- (1) A statement in a condition report under section 97 is conclusive evidence, for the purposes of this Act, of the state of repair or general condition of the room on the day specified in the report if the report is signed by or on behalf of the rooming house owner and the resident.
- (2) Subsection (1) does not apply to—
- (a) a state of repair or general condition that could not reasonably have been discovered on a reasonable inspection of the room; or
 - (b) a statement with which the resident disagrees under an endorsement on the report.

Division 3—Rent

99 Limit on rent in advance

A rooming house owner must not require a resident to pay rent more than 14 days in advance.

Penalty: 10 penalty units.

100 Receipts for rent

- (1) A person who receives a payment of rent from a resident of a rooming house must give a written receipt in accordance with this section to the person making the payment—
- (a) immediately, if the payment is made in person; or
 - (b) if the payment is not made in person and a receipt is requested at the time of making the payment, within 5 business days of receiving the payment.

Penalty: 5 penalty units.

- (2) If a person receives a payment of rent from a resident of a rooming house and a written receipt is not required to be given under subsection (1), the person must keep a record of the payment of rent until the earlier of—
- (a) the end of 12 months after receiving the payment; or
 - (b) if a resident requests a copy of the record before the end of 12 months after making the payment, the provision of a copy of the record to the resident.

Penalty: 5 penalty units.

- (2A) If a resident of a rooming house requests a copy of a record under subsection (2)(b) before the end of 12 months after making the payment of rent, a person who keeps a record under subsection (2) must provide a copy of that record to the resident within 5 business days after receiving the request.

Penalty: 5 penalty units.

S. 100(2)
substituted by
No. 45/2002
s. 32.

S. 100(2A)
inserted by
No. 45/2002
s. 32.

s. 101

S. 100(2B)
inserted by
No. 45/2002
s. 32.

- (2B) For the purposes of subsection (2), a record must contain information which enables the details specified in paragraphs (a) to (e) of subsection (3) to be identified.
- (3) A receipt under this section must be signed by the person who receives the payment and must state—
- (a) the name of the resident and the rooming house; and
 - (b) the date of receipt; and
 - (c) the period for which payment is made; and
 - (d) the amount paid; and
 - (e) the fact that the payment is for rent.
- (4) The regulations may provide that a prescribed person is exempt from subsection (1), (2) or (3) subject to the conditions, if any, specified in the regulations.

101 How much notice of rent increase is required?

S. 101(1)
amended by
No. 45/2002
s. 33(1)(a).

- (1) Subject to subsection (3), a rooming house owner must give a resident at least 60 days notice in the prescribed form of a proposed rent increase.
- (2) A notice of a proposed rent increase under subsection (1) may only provide for one rent increase.
- (3) If a rooming house owner provides additional services to the resident at the resident's request, the owner may increase the rent by an amount agreed between them from the time that the additional services are provided without giving the notice required under subsection (1).
- (4) An agreement under subsection (3) must—
- (a) be in writing; and
 - (b) be signed by the resident and the rooming house owner; and

(c) specify—

- (i) the additional services to be provided;
and
 - (ii) the amount of the increase; and
 - (iii) the date the increase will start to apply.
- (5) The notice of a proposed rent increase must include a statement informing the resident of the resident's right under section 102 to apply within 30 days after the notice is given to the Director to investigate and report on the proposed rent.
- (5A) A rooming house owner must not increase the rent payable by a resident at intervals of less than 6 months.
- (6) A rent increase in contravention of this section is invalid.

S. 101(5)
amended by
No. 45/2002
s. 33(1)(b).

S. 101(5A)
inserted by
No. 45/2002
s. 33(2).

102 Resident may complain to Director about excessive rent

- (1) A resident of a rooming house may apply to the Director to investigate and report if the resident has received a notice of a rent increase and the resident considers that the proposed rent is excessive.
- (1A) A resident of a rooming house may apply to the Director to investigate and report if—
- (a) the resident's rent has been reduced as a result of an increase in the room capacity of the resident's room; and
 - (b) the resident considers that the reduction is insufficient and the rent is excessive.
- (2) An application under subsection (1) must be made in writing within 30 days after the notice of the rent increase is given.

S. 102(1A)
inserted by
No. 63/2005
s. 10(1).

s. 103

S. 102(2A)
inserted by
No. 63/2005
s. 10(2).

- (2A) An application under subsection (1A) must be made in writing within 30 days after the notice of the proposed increase in room capacity was given to the resident under section 94B.
- (3) As soon as practicable after receiving an application, the Director must—
- (a) carry out an investigation; and
 - (b) give a written report to the resident and a copy of the report to the rooming house owner.
- (4) The report of the Director must—
- (a) include a statement informing the resident of the resident's right under section 103 to apply to the Tribunal for an order in respect of the proposed rent; and
 - (b) take into account the matters referred to in section 104(3).

103 Application to Tribunal about excessive rent

- (1) After receiving a report from the Director under section 102, the resident may apply to the Tribunal for an order declaring the proposed rent excessive.
- (2) An application under subsection (1) must—
- (a) be made within 30 days after the resident receives the Director's report;

S. 103(2)(a)
amended by
No. 52/1998
s. 236(d)(i).

S. 103(2)(b)
repealed by
No. 52/1998
s. 236(d)(ii).

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104 What can the Tribunal order?

- (1) If an application is made under section 103, the Tribunal may—
 - (a) make an order—
 - (i) declaring the proposed rent excessive; and
 - (ii) directing that for the period specified in the order the rent must not exceed the amount specified in the order; or
 - (b) dismiss the application.
- (2) The Tribunal must have regard to the Director's report obtained under section 102 in determining the application.
- (3) The Tribunal must make an order declaring the proposed rent excessive if it is satisfied that the proposed rent is more than that which should reasonably be paid by a resident having regard to—
 - (a) the rent payable for a similar room in the rooming house;
 - (b) the rent payable for a similar room in a similar rooming house in a similar location;
 - (ba) in the case of a shared room, the rent payable by each resident of a similar shared room in the rooming house;
 - (bb) in the case of a shared room, the rent payable by each resident of a similar shared room in a similar rooming house in a similar location;
 - (c) the state of repair and general condition of the room and the rooming house;
 - (d) any variation in the cost of providing facilities and services in the rooming house;

S. 104(3)(ba)
inserted by
No. 63/2005
s. 11(1).

S. 104(3)(bb)
inserted by
No. 63/2005
s. 11(1).

s. 105

S. 104(3)(ea)
inserted by
No. 45/2002
s. 34.

(e) any changes in the rent and the condition of the room or facilities since the resident first occupied the room and since the last rent increase;

(ea) the number of rent increases (if any) in the preceding 24 months, the amount of each rent increase in that period and the timing of those increases;

S. 104(3)(f)
substituted by
No. 63/2005
s. 11(2).

(f) any improvements made to the room that should not be considered in calculating the rent because they were made by the resident.

(4) If the Tribunal makes an order under subsection (1)(a) in relation to a room, the rooming house owner cannot require the resident to pay an amount of rent greater than that specified in the order for a period of 6 months after the day on which the order comes into operation.

(5) The amount specified in the order must not be less than the amount payable by the resident immediately before the notice was given under section 101.

S. 104(6)
inserted by
No. 63/2005
s. 11(3).

(6) Subsection (5) does not apply if the order relates to an application made under section 103 in relation to a reduction in rent following an increase in the room capacity of a resident's room.

105 Payment of increased rent pending Tribunal decision

S. 105(1)
amended by
No. 63/2005
s. 12(1).

(1) Pending the Tribunal's decision under section 104 in respect of an increase in rent, the resident must pay, from the time that the proposed increase is to apply—

(a) the increased rent specified in the notice under section 101; or

(b) 110% of the rent immediately before the notice was given—

whichever is less.

- (1A) Pending the Tribunal's decision under section 104 in respect of a reduction in rent for a shared room, the resident must pay, from the time that the reduced rent is to apply, the reduced rent specified by the rooming house owner in the notice given under section 94B. **S. 105(1A) inserted by No. 63/2005 s. 12(2).**
- (2) If the Tribunal makes an order under section 104 in respect of an increase in rent, it may also order that any excess rent paid by the resident from the time the increase took effect until the date of the order be refunded by the rooming house owner. **S. 105(2) amended by No. 63/2005 s. 12(3).**
- (2A) If the Tribunal makes an order under section 104 in respect of a reduction in rent for a shared room, it may also order that any excess rent paid by the resident from the date that the relevant increase in room capacity took effect until the date of the order be refunded by the rooming house owner. **S. 105(2A) inserted by No. 63/2005 s. 12(4).**
- (3) The order may specify the procedure for the refund to the resident.

106 Rent must be reduced if services are reduced

S. 106 amended by No. 45/2002 s. 35 (ILA s. 39B(1)).

- (1) If a rooming house owner ceases to provide services to a resident, the rooming house owner must reduce the rent by—
- (a) the amount agreed between them; or
- (b) an amount determined by the Tribunal in the absence of any agreement on an application by either party.

s. 106A

S. 106(2)
inserted by
No. 45/2002
s. 35.

- (2) If the Tribunal determines an amount under subsection (1)(b), it may also order that—
- (a) the reduction in rent is to take effect from the time the rooming house owner ceased to provide services to the resident; and
 - (b) the rooming house owner is to refund to the resident any excess rent paid by the resident from the time the rooming house owner ceased to provide services until the date of the order.

S. 106A
inserted by
No. 63/2005
s. 13.

106A Rent must be reduced if room capacity increased

If the room capacity of a room is increased under section 94B, the rooming house owner must reduce the rent payable by each person who is a resident of the room on the date that the consent to the increase in room capacity takes effect to the reduced rent specified in the notice given to the resident under that section.

107 Resident's goods not to be taken for rent

A person must not take or dispose of a resident's goods on account of any rent owing by the resident of the rooming house.

Penalty: 10 penalty units.

Division 4—Other charges

108 Separately metered rooms

- (1) A rooming house owner may charge a resident a charge not included in rent for electricity and gas consumed in the room if—
- (a) the rooming house owner is responsible for the payment of the electricity and gas; and
 - (b) the room is separately metered.

-
- (2) A charge under subsection (1) must not be more than the charge made by the relevant supplier of the utility.
 - (3) This section does not apply to a resident of a shared room.

S. 108(2)
amended by
No. 45/2002
s. 36.

S. 108(3)
inserted by
No. 63/2005
s. 14.

109 Schedule of services provided to be given to resident

If a rooming house owner charges an amount for services to a resident, the owner must—

- (a) provide the resident with a separate schedule of the amount relating to the services that the rooming house owner provides before the resident takes up residency of the room; and
- (b) if the resident uses any of those services, provide the resident with an itemised account showing the resident's individual use of the services.

109A Director of Housing may impose service charge on resident

S. 109A
inserted by
No. 45/2002
s. 37.

- (1) The Director of Housing may impose a service charge on a resident in a rooming house which has been declared to be a rooming house under section 19(2) or (3) for any water, central heating, laundry or utility services or facilities made available to the resident.
- (2) Subsection (1) only applies if it is not possible or practicable to accurately measure the use by the resident of that service or facility.
- (3) A service charge may be increased or decreased by an amount in line with changes in the cost of providing the services or facilities.

s. 110

- (4) In this section *Director of Housing* includes any incorporated body that receives financial assistance from the Director of Housing for the purposes of providing non-profit housing.

Division 5—General duties of residents and rooming house owners

110 Resident's use of room

A resident must use the room for residential purposes only.

S. 111
amended by
No. 63/2005
s. 15(1)(2) (ILA
s. 39B(1)).

111 Resident must not use room for illegal purposes

- (1) In the case of a room other than a shared room, a resident must not use the room or permit its use for any purpose that is illegal at common law or under an Act.
- (2) A resident of a shared room must not use the room or permit his or her visitors to use the room for any purpose that is illegal at common law or under an Act.

S. 111(2)
inserted by
No. 63/2005
s. 15(2).

112 Resident's duty to pay rent

- (1) Subject to subsection (2), a resident must pay the agreed rent to the rooming house owner on the due date and in the agreed manner.
- (2) Despite subsection (1), if a rooming house owner contravenes section 94B or 529 by permitting an additional person to occupy a room in the rooming house, an existing resident of the room at the date that the additional person commenced occupation of the room is not liable to pay rent for his or her occupancy of the room in respect of the period commencing on that date and ending on the first of the following to occur—

S. 112
amended by
No. 63/2005
s. 16(1)(2) (ILA
s. 39B(1)).

S. 112(2)
inserted by
No. 63/2005
s. 16(2).

- (a) the date that the room capacity of the room is reduced to the room capacity existing immediately before the additional person commenced occupation of the room; or
- (b) the date that the consent of the existing resident of the room to the increase in room capacity under section 94D takes effect.

113 Quiet enjoyment—resident's duty

S. 113
amended by
No. 63/2005
s. 17 (ILA
s. 39B(1)).

- (1) A resident must not do anything in or near the rooming house or allow his or her visitors to the rooming house to do anything which interferes with the privacy and peace and quiet of the other residents or their proper use and enjoyment of the rooming house.
- (2) A resident of a shared room does not breach a duty under this section simply by sharing the room with another resident.

S. 113(2)
inserted by
No. 63/2005
s. 17.

114 Resident must keep room in clean condition

A resident must keep the room clean and in a condition which will not create a fire or health hazard.

115 Resident must not install fixtures without consent

A resident must not install any fixtures in the room or rooming house without the prior written consent of the rooming house owner.

116 Resident must notify owner of and compensate for damage

- (1) If any damage other than fair wear and tear is caused to the room or rooming house by the resident or his or her visitors, the resident must notify the rooming house owner of the damage and pay compensation for the damage to the rooming house owner.

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- (2) A resident must report to the rooming house owner any damage to or breakdown of facilities, fixtures, furniture or equipment provided by the rooming house owner of which the resident has knowledge.

117 Resident must not keep pet without consent

A resident must not keep an animal on the premises of the rooming house without the rooming house owner's consent.

118 Resident must give key to owner

A resident must give the rooming house owner a key to the door to the room to allow access as permitted by this Act.

119 Resident must observe house rules

A resident must observe all house rules made from time to time in accordance with this Act.

120 Rooming house owner must keep room and house in good repair

- (1) A rooming house owner must ensure that the rooming house and its rooms and any facilities, fixtures, furniture or equipment provided by the rooming house owner are maintained in good repair.
- (2) If a rooming house owner is repairing or renovating residents' facilities, the owner must—
- (a) minimise inconvenience and disruption to the residents; and
 - (b) if necessary, provide temporary substitute facilities.

121 Rooming house owner must provide access

A rooming house owner must—

- (a) provide a resident with 24 hour access to his or her room and the toilet and bathroom facilities;
- (b) provide access during all reasonable hours to other facilities for the resident's use in the rooming house.

122 Quiet enjoyment—rooming house owner's duty

- (1) A rooming house owner must not unreasonably restrict or interfere with a resident's privacy, peace and quiet or proper use and enjoyment of his or her room and the facilities for the residents' use in the rooming house.
- (2) A rooming house owner must take all reasonable steps to ensure that a resident of a shared room does not do anything or permit his or her visitors to do anything that interferes with the privacy, peace and quiet of, or the proper use and enjoyment of the room by, other residents of the room.
- (3) A rooming house owner does not breach a duty under subsection (1) simply by permitting more than one resident to occupy a shared room in accordance with this Part.

S. 122
amended by
No. 63/2005
s. 18 (ILA
s. 39B(1)).

S. 122(2)
inserted by
No. 63/2005
s. 18.

S. 122(3)
inserted by
No. 63/2005
s. 18.

123 Security

A rooming house owner must take all reasonable steps to ensure security for the property of a resident in his or her room.

124 Display of statement of rights and house rules

A rooming house owner must display prominently in each resident's room and, not later than the day on which a resident agrees to take up occupation, give the resident—

- (a) a written statement in a form approved by the Director setting out in summary form the resident's rights and duties under this Act; and
- (b) a copy of the house rules.

Penalty: 5 penalty units.

125 Owner to give additional information

(1) If there is no agent acting for the rooming house owner, a rooming house owner must, on or before the occupation day, give the resident—

- (a) written notice of the rooming house owner's full name and address for the service of documents; and
- (b) an emergency telephone number to be used in the case of the need for urgent repairs.

Penalty: 5 penalty units.

(2) If there is an agent acting for the rooming house owner, a rooming house owner must, on or before the occupation day, give the resident—

- (a) written notice of the agent's full name and address for service of documents and the agent's telephone number; and

- (b) a written statement setting out—
- (i) whether or not the agent can authorise urgent repairs; and
 - (ii) if the agent can authorise urgent repairs, the maximum amount for repairs which the agent can authorise; and
 - (iii) the agent's telephone number for urgent repairs.

Penalty: 5 penalty units.

- (3) A rooming house owner must give the resident notice in writing of any change in the information set out in subsection (1) or (2) before the end of 7 days after the change.

Penalty: 5 penalty units.

- (4) In this section *occupation day* means a day that is the agreed day on which the resident is to take up occupation of a room.

126 House rules

A rooming house owner may make house rules relating to the use and enjoyment of facilities and rooms.

127 Duties relating to house rules

- (1) The rooming house owner must give a resident at least 7 days written notice of any proposed change in the house rules.

Penalty: 5 penalty units.

s. 128

- (2) A rooming house owner must—
- (a) take all reasonable steps to ensure that the house rules are observed by all residents; and
 - (b) ensure that the house rules are reasonable and are enforced and interpreted consistently and fairly.

128 What if house rules are thought to be unreasonable?

- (1) A resident may apply to the Tribunal for an order declaring a house rule to be unreasonable.

S. 128(2)
repealed by
No. 52/1998
s. 236(e).

* * * * *

- (3) If the Tribunal considers that a house rule is unreasonable, it may declare the rule invalid.

Division 6—Repairs

129 Urgent repairs

- (1) A resident may arrange for urgent repairs to be carried out if—
- (a) the resident has taken reasonable steps to arrange for the rooming house owner or the rooming house owner's agent to immediately carry out the urgent repairs to the room or the rooming house; and
 - (b) the resident is unable to get the rooming house owner or the agent to carry out those repairs.
- (2) If the resident carries out repairs under subsection (1)—
- (a) the resident must give the rooming house owner 14 days written notice of the repairs carried out and the cost; and

- (b) the rooming house owner is liable to reimburse the resident for the reasonable cost of the repairs or \$1000, whichever is less.
- (3) This section does not apply—
 - (a) to fixtures, furniture or equipment supplied by the resident; or
 - (b) if there is no immediate danger to health or safety and the resident is able to use other facilities in the rooming house.

130 Application to Tribunal for urgent repairs

- (1) A resident may apply to the Tribunal for an order requiring the rooming house owner or the rooming house owner's agent to carry out specified urgent repairs if—
 - (a) the resident cannot meet the cost of the repairs; or
 - (b) the repairs cost more than \$1000; or
 - (c) the rooming house owner refuses to pay the cost of the urgent repairs.
- (2) The Tribunal must hear an application under subsection (1) within 2 business days after the application is made.

131 Application to Director to investigate need for non-urgent repairs

- (1) A resident may apply to the Director to investigate whether the rooming house owner is in breach of a duty to ensure the room or the rooming house is maintained in good repair if—
 - (a) the resident has given notice to the rooming house owner that repairs (other than urgent repairs) are required to the room or rooming house; and

s. 132

- (b) the rooming house owner has not carried out the repairs within 14 days after being given the notice.
- (2) An application under subsection (1) must be in writing.
- (3) On an application under subsection (1), the Director—
 - (a) must investigate; and
 - (b) may negotiate arrangements for the carrying out of repairs if the Director is satisfied that the rooming house owner is in breach of the duty to maintain the room or rooming house in good repair; and
 - (c) must give a written report to the resident.

132 Application to Tribunal for non-urgent repairs

- (1) A resident may apply to the Tribunal for an order requiring the rooming house owner to carry out specified repairs if—
 - (a) the resident has received the Director's report under section 131; and
 - (b) the resident is still of the view that satisfactory arrangements have not been made for the carrying out of the repairs.
- (2) An application under subsection (1) must be made within 60 days of receiving the Director's report under section 131.

S. 132(2)
repealed by
No. 52/1998
s. 236(f),
new s. 132(2)
inserted by
No. 45/2002
s. 38(1).

S. 132(3)
repealed by
No. 52/1998
s. 236(f).

* * * * *

- (4) A resident may apply to the Tribunal for an order requiring the rooming house owner to carry out specified repairs without the Director's report under section 131 if the resident has not received that report within 90 days after the resident applied for that report.

S. 132(4)
amended by
No. 45/2002
s. 38(2).

133 What can the Tribunal order?

- (1) The Tribunal may make an order requiring the rooming house owner to carry out specified repairs if it is satisfied that the owner is in breach of the duty to maintain the room or rooming house in good repair.
- (2) The order must specify the repairs and the time within which they must be carried out.
- (3) If an order under this section in relation to a room is made on the application of a resident of a shared room, the Tribunal must include in the order a direction to the rooming house owner to give a copy of the order to each other resident of the shared room.

S. 133(3)
inserted by
No. 63/2005
s. 19.

134 Payment of rent into Rent Special Account

- (1) If a resident has given notice under section 131 requiring repairs to be carried out, the resident may apply to the Tribunal for an order authorising the payment of the rent into the Rent Special Account.
- (2) The Tribunal may make an order authorising the resident to pay the rent into the Rent Special Account for a period specified by the Tribunal if it is satisfied that—
- (a) a notice requiring the carrying out of repairs has been given to the rooming house owner in accordance with this Act; and
 - (b) the rooming house owner has failed to comply with the duty to carry out the repairs.

- (3) If an order is made under subsection (2)—
- (a) the amount of the rent held in the Rent Special Account at the end of that period must be paid to the rooming house owner; and
 - (b) on application by the rooming house owner, the Tribunal may order that the whole or such part of the rent as it may determine be paid to the rooming house owner before the end of that period, if it is satisfied that the owner has fulfilled or is fulfilling the owner's duty to carry out the repairs.

135 Repair provisions not applicable to certain damage

Sections 131 to 134 do not apply to damage caused by the misuse or the negligence of the resident or his or her visitor.

Division 7—Rights of entry

136 Access to room

A rooming house owner or a person appointed in writing as the rooming house owner's agent for the purpose has a right to enter a room occupied by a resident—

- (a) if the resident, or in the case of a shared room, each resident of the room, agrees at the time entry is sought; or
- (b) if there is an emergency and immediate entry is necessary to save life or valuable property; or
- (c) if services are provided and it is necessary to enter to provide them, but only during the hours specified in the house rules; or

S. 136(a)
amended by
No. 63/2005
s. 20(a).

- (d) for a purpose set out in section 137, at any time between 8 a.m. and 6 p.m. on any day (except a public holiday) if at least 24 hours notice has been given to the resident, or in the case of a shared room, each resident of the room, in accordance with section 139.

S. 136(d)
amended by
No. 63/2005
s. 20(b).

137 Grounds for entry of a room

A right of entry in respect of a room may be exercised if—

- (a) before giving notice of entry, a notice to vacate or a notice of intention to vacate the room has been given and entry is required to show the room to a prospective resident; or
- (b) the rooming house is to be sold or used as security for a loan and entry is required to show the rooming house to a prospective buyer or lender; or
- (c) entry is required to enable the rooming house owner to carry out a duty under this Act or any other Act; or
- (d) the rooming house owner or the rooming house owner's agent has reasonable grounds to believe that a resident of the room has failed to comply with his or her duties under this Act; or
- (e) entry is required to enable inspection of the room and entry for that purpose has not been made within the last 4 weeks.

S. 137(d)
amended by
No. 63/2005
s. 21.

138 Manner of entry

A person exercising a right of entry under this Division—

- (a) must do so in a reasonable manner; and
- (b) must not stay in the room longer than is necessary to achieve the purpose of the entry without the resident's consent.

139 What must be in a notice of entry?

A notice requiring entry must—

- (a) be in writing; and
- (b) state why the rooming house owner or the rooming house owner's agent wishes to enter; and
- (c) be given—
 - (i) by post; or
 - (ii) by delivering it personally to the resident between the hours of 8 a.m. and 6 p.m.

140 Resident has duty to permit entry

A resident of a rooming house has a duty to permit a person exercising a right of entry in accordance with this Division to enter the room.

141 What if damage is caused during entry?

- (1) A resident of a rooming house may apply to the Tribunal for an order for compensation if the rooming house owner or the rooming house owner's agent causes damage to the resident's goods in the room when exercising a right of entry under section 136.

-
- (2) If an application is made under subsection (1), the Tribunal—
- (a) may make an order for payment of any compensation that it thinks fit if it is satisfied that damage was caused to the resident's goods in the room; or
 - (b) may refuse to make an order.

142 What if a person exercising right of entry fails to comply with Division?

- (1) If the rooming house owner or the rooming house owner's agent has exercised a right of entry and in doing so fails to comply with this Division, the resident may apply to the Tribunal for an order restraining the rooming house owner and the rooming house owner's agent from exercising a right of entry under section 136 for a specified period.
- (2) If an application is made under subsection (1), the Tribunal—
- (a) may make an order prohibiting the rooming house owner or the rooming house owner's agent from exercising a right of entry under section 136 (except for a purpose set out in section 137(c) or (d)) during the period specified in the order if it is satisfied that it is reasonable to do so; or
 - (b) may refuse to make an order.

142A Offence relating to entering room occupied by resident

S. 142A
inserted by
No. 45/2002
s. 39.

A rooming house owner or a rooming house owner's agent must not, without reasonable excuse, enter a room occupied by a resident otherwise than in accordance with this Division.

Penalty: 5 penalty units.

**PART 4—CARAVAN PARKS AND MOVABLE
DWELLINGS—RESIDENCY RIGHTS AND DUTIES**

Division 1—Residency rights

143 Residency right

Subject to this Act, a resident has—

- (a) a right to reside on the site which he or she occupies; and
- (b) a right to occupy the caravan on that site.

144 Agreements

- (1) A resident and a caravan park owner may enter an agreement specifying the terms and conditions of the resident's use and enjoyment of the caravan park.
- (2) A resident and a caravan owner may enter an agreement specifying the terms and conditions of the resident's use and enjoyment of the caravan.
- (3) A caravan park owner and a caravan owner may enter an agreement specifying the terms and conditions of the occupancy of a site by a caravan.
- (4) A term or condition in an agreement under this section that is inconsistent with this Act or that purports to exclude, restrict or modify the application of or exercise of a right conferred by this Act is invalid.
- (5) In this section *resident* includes a proposed resident.

144A Harsh and unconscionable terms

S. 144A
inserted by
No. 45/2002
s. 44.

- (1) A resident may apply to the Tribunal for an order declaring invalid or varying a term of an agreement referred to in section 144(1) or (2).
- (2) A caravan owner may apply to the Tribunal for an order declaring invalid or varying a term of an agreement referred to in section 144(3).
- (3) On an application under subsection (1) or (2), the Tribunal, by order, may declare invalid or vary a term of the agreement if it is satisfied that the term is harsh or unconscionable or is such that a court exercising its equitable jurisdiction would grant relief.
- (4) An order under this section has effect according to its terms.

145 Caravan park owner to notify prospective resident of rights

A caravan park owner must give notice in the prescribed form to a person who proposes to occupy a site in the caravan park as his or her main residence that—

- (a) he or she may enter into a written agreement with the caravan park owner to become a resident of the caravan park at any time; and
- (b) even if an agreement referred to in paragraph (a) is not entered into, the person becomes a resident of the caravan park if the person occupies, for at least 60 consecutive days, any site in the caravan park as his or her only or main residence.

S. 145(b)
amended by
No. 63/2005
s. 22.

Penalty: 5 penalty units.

Division 2—Bonds

146 Payment of bond

S. 146(1)
amended by
No. 45/2002
s. 45.

- (1) A caravan park owner may require a resident or proposed resident to pay a bond before the resident or proposed resident commences occupation as a resident of a caravan or site.

S. 146(2)
amended by
No. 45/2002
s. 45.

- (2) A caravan owner may require a resident or proposed resident to pay a bond before the resident or proposed resident commences occupation as a resident of a caravan.
- (3) A caravan park owner must not require a person to pay a bond unless the caravan park owner has entered into a written agreement with the person to become a resident of the caravan park.

Penalty: 10 penalty units.

147 What is the maximum bond?

A caravan park owner or caravan owner must not demand or receive a bond which exceeds the equivalent of the rent or hiring charge payable for a period of 28 days.

Penalty: 10 penalty units.

148 Condition report

S. 148(1)
amended by
No. 45/2002
s. 46(1).

- (1) If a resident or proposed resident pays a bond, the caravan park owner or caravan owner must, before the resident or proposed resident commences occupation as a resident, give the resident or proposed resident 2 copies of a condition report signed by or on behalf of the caravan park owner or caravan owner specifying the state of repair and general condition of the caravan on the day specified in the report.

Penalty: 5 penalty units.

- (2) Within 3 business days after commencing occupation as a resident, the resident must return one copy of the condition report to the caravan park owner or caravan owner—
- (a) signed by or on behalf of the resident; or
 - (b) with an endorsement so signed to the effect that the resident agrees or disagrees with the whole or any specified part of the report.

S. 148(2)
amended by
No. 45/2002
s. 46(2).

149 Condition report is evidence of state of repair

- (1) A statement in a condition report under section 148 is conclusive evidence, for the purposes of this Act, of the state of repair or general condition of the caravan on the day specified in the report if the report is signed by or on behalf of—
- (a) the caravan park owner or the caravan owner; and
 - (b) the resident.
- (2) Subsection (1) does not apply to—
- (a) a state of repair or general condition that could not reasonably have been discovered on a reasonable inspection of the caravan; or
 - (b) a statement with which the resident disagrees under an endorsement on the report.

Division 3—Rents and hiring charges

150 Limit on rent or hiring charge in advance

- (1) A caravan park owner must not require a resident to pay rent more than 14 days in advance.
Penalty: 10 penalty units.
- (2) A caravan owner must not require a resident to pay a hiring charge more than 28 days in advance.
Penalty: 10 penalty units.

151 Receipts for rent or hiring charge

- (1) A person who receives a payment of rent or a payment of a hiring charge from a resident must give a written receipt in accordance with this section to the person making the payment—
- (a) immediately, if the payment is made in person; or
 - (b) if the payment is not made in person and a receipt is requested at the time of making the payment, within 5 business days of receiving the payment.

Penalty: 5 penalty units.

- (2) If a person receives a payment of rent or a payment of a hiring charge from a resident and a written receipt is not required to be given under subsection (1), the person must keep a record of the payment of rent or the payment of a hiring charge until the earlier of—
- (a) the end of 12 months after receiving the payment; or
 - (b) if a resident requests a copy of the record before the end of 12 months after making the payment, the provision of a copy of the record to the resident.

Penalty: 5 penalty units.

- (2A) If a resident requests a copy of a record under subsection (2)(b) before the end of 12 months after making the payment of rent or the payment of a hiring charge, a person who keeps a record under subsection (2) must provide a copy of that record to the resident within 5 business days after receiving the request.

Penalty: 5 penalty units.

S. 151(2)
substituted by
No. 45/2002
s. 47.

S. 151(2A)
inserted by
No. 45/2002
s. 47.

- (2B) For the purposes of subsection (2), a record must contain information which enables the details specified in paragraphs (a) to (e) of subsection (3) to be identified.
- (3) A receipt under this section must be signed by the person who receives the payment and must state—
- (a) the name of the resident and the caravan park; and
 - (b) the date of receipt; and
 - (c) the period for which payment is made; and
 - (d) the amount paid; and
 - (e) the fact that the payment is for rent or a hiring charge.
- (4) The regulations may provide that a prescribed person is exempt from subsection (1), (2) or (3) subject to the conditions, if any, specified in the regulations.

S. 151(2B)
inserted by
No. 45/2002
s. 47.

152 How much notice is required of rent or hiring charge increase?

- (1) A caravan park owner must give a resident at least 60 days notice in the prescribed form of a proposed rent increase.
- (2) A caravan owner must give a resident at least 60 days notice in the prescribed form of a proposed hiring charge increase.
- (3) A notice of a proposed rent increase under subsection (1) or a proposed hiring charge increase under subsection (2) may only provide for one rent increase or hiring charge increase.
- (4) If the caravan park owner is also the caravan owner or the agent of the caravan owner, the notice must specify the rent increase and hiring charge increase separately.

S. 152(1)
amended by
No. 45/2002
s. 48(1)(a).

S. 152(2)
amended by
No. 45/2002
s. 48(1)(b).

s. 153

S. 152(5)
amended by
No. 45/2002
s. 48(1)(c).

- (5) The notice of a proposed rent increase or hiring charge increase must include a statement informing the resident of the resident's right under section 153 to apply within 30 days after the notice is given to the Director to investigate and report on the proposed rent or hiring charge.

S. 152(5A)
inserted by
No. 45/2002
s. 48(2).

- (5A) A caravan park owner must not increase the rent payable by a resident at intervals of less than 6 months.

S. 152(5B)
inserted by
No. 45/2002
s. 48(2).

- (5B) A caravan owner must not increase the hiring charge payable by a resident at intervals of less than 6 months.

- (6) A rent increase or hiring charge increase in contravention of this section is invalid.

153 Resident may complain to Director about excessive rent or hiring charge

- (1) A resident of a caravan park may apply to the Director to investigate and report if the resident has received a notice of a rent increase or hiring charge increase and the resident considers that the proposed rent or hiring charge is excessive.
- (2) An application under subsection (1) must be made in writing within 30 days after the notice of the rent or hiring charge increase is given.
- (3) As soon as practicable after receiving an application, the Director must—
- (a) carry out an investigation; and
 - (b) give a written report to the resident and a copy of the report to the caravan park owner or caravan owner.

- (4) The report of the Director must—
- (a) include a statement informing the resident of the resident's right under section 154 to apply to the Tribunal for an order in respect of the proposed rent or hiring charge; and
 - (b) take into account the matters referred to in section 155(3).

154 Application to Tribunal about excessive rent or hiring charge

- (1) After receiving a report from the Director under section 153, the resident may apply to the Tribunal for an order declaring the proposed rent or hiring charge excessive.
- (2) An application under subsection (1) must—
- (a) be made within 30 days after the resident receives the Director's report;

S. 154(2)(a)
amended by
No. 52/1998
s. 236(g)(i).

* * * * *

S. 154(2)(b)
repealed by
No. 52/1998
s. 236(g)(ii).

155 What can the Tribunal order?

- (1) If an application is made under section 154, the Tribunal may—
- (a) make an order—
 - (i) declaring the proposed rent or hiring charge excessive; and
 - (ii) directing that for the period specified in the order the rent or hiring charge must not exceed the amount specified in the order; or
 - (b) dismiss the application.

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- (2) The Tribunal must have regard to the Director's report obtained under section 153 in determining the application.
- (3) The Tribunal must make an order declaring the proposed rent excessive if it is satisfied that the proposed rent is more than that which should reasonably be paid by a resident having regard to—
- (a) the rent payable for a similar site in the caravan park;
 - (b) the rent payable for a similar site in a similar caravan park in a similar location;
 - (c) the state of repair and general condition of the site and the caravan park;
 - (d) any variation in the cost of providing facilities or services that the caravan park owner provides;
 - (e) any changes in the rent and the condition of the site or facilities in the caravan park since the resident first occupied the site and since the last rent increase;
 - (ea) the number of rent increases (if any) in the preceding 24 months, the amount of each rent increase in that period and the timing of those increases;
 - (f) any improvements made to the site which should not result in an increase because they were made by the resident.
- (4) The Tribunal must make an order declaring a proposed hiring charge excessive if it is satisfied that the proposed hiring charge is more than that which should reasonably be paid by a resident having regard to—
- (a) the hiring charges payable by a resident for a similar caravan;

S. 155(3)(ea)
inserted by
No. 45/2002
s. 49(1).

- (ab) the number of hiring charge increases (if any) in the preceding 24 months, the amount of each hiring charge increase in that period and the timing of those increases;
 - (b) the state of repair and general condition of the caravan.
- (5) If the Tribunal makes an order under subsection (1)(a), a caravan park owner or caravan owner cannot require a resident to pay an amount of rent or hiring charge greater than that specified in the order for a period of 6 months after the day on which the order comes into operation.
- (6) The amount specified in the order must not be less than the amount payable by the resident immediately before the notice was given under section 152.

S. 155(4)(ab)
inserted by
No. 45/2002
s. 49(2).

156 Payment of increased rent or hiring charge pending Tribunal decision

- (1) Pending the Tribunal's decision under section 155, the resident must pay, from the time the proposed increase is to apply—
- (a) the increased rent or hiring charge specified in the notice under section 152; or
 - (b) 110% of the rent or hiring charge immediately before the notice was given—
- whichever is less.
- (2) If the Tribunal makes an order under section 155, it may also order that any excess rent or hiring charge paid by the resident from the time the increase took effect until the date of the order be refunded by the caravan park owner or the caravan owner.
- (3) The order may specify the procedure for the refund to the resident.

157 Additional rent

- (1) A caravan park owner may charge a resident a reasonable additional rent for any visitor who stays in the caravan owned by the resident or hired by the resident from a caravan owner.
- (2) A resident may apply to the Tribunal for an order that the additional rent is unreasonable.
- (3) If, after hearing the resident and the caravan park owner, the Tribunal determines that the amount of the additional rent is unreasonable, it may determine in the order the amount of additional rent to be paid by the resident.

158 Additional hiring charge

- (1) A caravan owner may charge a resident a reasonable additional hiring charge for any visitor who stays in a caravan hired by the resident from the caravan owner.
- (2) A resident may apply to the Tribunal for an order that the additional hiring charge is unreasonable.
- (3) If, after hearing the resident and the caravan owner, the Tribunal determines that the amount of the additional hiring charge is unreasonable, it may determine in the order the amount of additional hiring charge to be paid by the resident.

159 Rent must be reduced if services are reduced

- (1) If a caravan park owner ceases providing services to a resident, the caravan park owner must reduce the rent by—
 - (a) the amount agreed between them; or
 - (b) an amount determined by the Tribunal in the absence of any agreement on an application by either party.

S. 159
amended by
No. 45/2002
s. 50 (ILA
s. 39B(1)).

- (2) If the Tribunal determines an amount under subsection (1)(b), it may also order that—
- (a) the reduction in rent is to take effect from the time the caravan park owner ceased to provide services to the resident; and
 - (b) the caravan park owner is to refund to the resident any excess rent paid by the resident from the time the caravan park owner ceased to provide services until the date of the order.

S. 159(2)
inserted by
No. 45/2002
s. 50.

160 Resident's goods not to be taken for rent or hiring charges

A person must not take or dispose of a resident's goods on account of rent or hiring charges owing by the resident.

Penalty: 10 penalty units.

Division 4—Other charges

161 Fee for supply of key

A caravan park owner may charge a reasonable initial fee for the supply of a key or device enabling a resident to gain vehicular access to the caravan park.

162 Resident's liability for electricity, gas and water charges

- (1) A resident is liable for all charges made for the supply or use of electricity, gas, water, drainage and sewerage to a site while the resident occupies the site, if those services are separately metered.
- (2) A resident is liable for all charges in respect of the supply or use of bottled gas at a site while the resident occupies the site.

163 Caravan park owner's liability for electricity, gas and water charges

A caravan park owner is liable for—

- (a) the installation costs and charges in respect of the initial connection to a site of any electricity, water or gas (including bottled gas) supply service;
- (b) the cost of all services to a site if those services are not separately metered;
- (c) all charges arising from a water supply service to a separately metered site that are not based on the amount of water supplied or used;
- (d) all charges related to the supply or use of sewerage and drainage services to or at a separately metered site that are not based on the extent of use of the services.

164 Owner's responsibility for charges for supply to non-complying appliances

- (1) A caravan owner is liable for the cost of water supplied to or used in the caravan for as long as the owner is in breach of section 181 or any law requiring the use of water efficient appliances for the caravan.
- (2) Subsection (1) applies despite anything to the contrary in section 162 of this Act and Part 13 of the **Water Act 1989** and Part II of the **Melbourne and Metropolitan Board of Works Act 1958**.

165 Reimbursement

- (1) If a caravan park owner pays for anything for which a resident is liable under section 162, the resident must reimburse the owner within 28 days after receiving a written request for reimbursement attached to a copy of the account and the receipt or other evidence of payment.
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- (2) If a resident pays for anything for which the caravan park owner or caravan owner is liable under section 163 or 164, the owner must reimburse the resident within 28 days after receiving a written request for reimbursement attached to a copy of the account and the receipt or other evidence of payment.
- (3) Subsection (1) does not apply if the caravan park owner directly bills the resident under a re-sale agreement with a supply authority.

166 Owner must not seek overpayment for utility charges

- (1) A caravan park owner must not seek payment or reimbursement for a cost or charge under section 165 that is more than the amount that the relevant supplier of the utility would have charged the resident.

S. 166(1)
amended by
No. 45/2002
s. 51.

Penalty: 10 penalty units.

- (2) If the relevant supplier of the utility has issued an account to the caravan park owner, a caravan park owner cannot recover from the resident an amount which includes any amount that could have been claimed as a concession or rebate by or on behalf of the resident from the relevant supplier of the utility.

S. 166(2)
amended by
No. 45/2002
s. 51.

- (3) Subsection (2) does not apply if the concession or rebate—

- (a) must be claimed by the resident and the caravan park owner has given the resident the opportunity to claim it and the resident does not do so by the payment date set by the relevant supplier of the utility; or

S. 166(3)(a)
amended by
No. 45/2002
s. 51.

- (b) is paid directly to the resident as a refund.

**Division 5—General duties of residents, caravan park
owners and caravan owners**

167 Resident's use of site

- (1) A resident must use the site for residential purposes only.
- (2) A resident must use the site, caravan park and facilities properly and ensure that his or her visitors do the same.

168 Resident must not use site for illegal purposes

A resident must not use the site or permit its use for any purpose that is illegal at common law or under an Act.

169 Resident's duty to pay rent and hiring charge

A resident must—

- (a) pay the rent and other charges agreed with the caravan park owner on the due dates and in the agreed manner; and
- (b) pay the hiring charges to the caravan owner on the due dates and in the agreed manner.

170 Quiet enjoyment—resident's duty

A resident must not do anything in or near the site or caravan park or allow his or her visitors to the caravan park or site to do anything which interferes with the privacy and peace and quiet of other occupants of the caravan park or their proper use and enjoyment of the caravan park.

171 Resident must keep site clean

- (1) A resident must keep the site clean and tidy.
- (2) A resident must maintain the site and caravan in a manner and condition that do not detract from the general standard of the caravan park as set by the caravan park owner from time to time.

172 Resident must not erect structures

A resident must not erect any structure on the site or in the caravan park without the prior written consent of the caravan park owner.

173 Resident must notify owner of and compensate for damage

- (1) If any damage other than fair wear and tear is caused to the caravan or any facility in the caravan park by the resident or his or her visitors, the resident must—
 - (a) repair the damage; or
 - (b) notify the caravan owner or caravan park owner of the damage and pay compensation for the damage to the caravan owner or the caravan park owner.
- (2) A resident must report to the caravan park owner any damage to or breakdown of communal facilities of which the resident has knowledge.

174 Number of persons residing on site

A resident must not allow more than the number of persons agreed with the caravan park owner to reside on the site.

175 Resident must observe caravan park rules

A resident must observe all caravan park rules made from time to time in accordance with this Act.

176 Caravan park owner must provide access

- A caravan park owner must—
- (a) provide 24 hours vehicular access for all residents to all sites; and
 - (b) provide 24 hour access for all residents to the caravan park and the communal toilet and bathroom facilities; and

- (c) provide access during all reasonable hours for residents to recreational areas, laundry and communal facilities other than toilets and bathrooms.

177 Quiet enjoyment—caravan park owner's duty

A caravan park owner must not unreasonably restrict or interfere with a resident's privacy, peace and quiet or proper use and enjoyment of the site and the communal facilities.

178 Caravan park owner must keep park etc. clean

A caravan park owner must—

- (a) keep common areas, gardens, roadways, paths and recreation areas in the caravan park clean and in a safe condition; and
- (b) arrange for the collection of residents' garbage and other garbage from the caravan park.

179 Duty of caravan park owner to maintain communal areas

- (1) A caravan park owner must maintain, repair and keep clean and tidy all communal bathrooms, toilets, laundries and other communal facilities in the caravan park.
- (2) When repairing or renovating communal facilities, a caravan park owner must—
 - (a) minimise inconvenience and disruption to residents; and
 - (b) if necessary, provide temporary substitute facilities.

180 Maintenance and repair of caravans

- (1) A caravan park owner must maintain in good repair a caravan hired on site to a resident.
- (2) A caravan owner who is not also the caravan park owner must maintain in good repair a caravan hired to a resident.

181 Owner must ensure water efficient appliances installed

A caravan owner must ensure that, if an appliance, fitting or fixture provided by the caravan owner that uses or supplies water in a caravan hired to the resident or on the site occupied by the resident needs to be replaced, the replacement has at least an A rating.

182 Statement of rights and copy of park rules

Not later than the day on which a resident enters into occupation of a site in a caravan park, the caravan park owner must give the resident—

- (a) a written statement in a form approved by the Director setting out in summary form the resident's rights and duties under this Act; and
- (b) a copy of the caravan park rules.

Penalty: 5 penalty units.

183 Statement of scale of certain charges, fees and commissions

- (1) Not later than the day on which a resident enters into occupation of a site in the caravan park, a caravan park owner must give the resident a statement setting out—
 - (a) the scale of additional rent for visitors set by the caravan park owner payable by a resident; and

- (b) the scale of additional hiring charges for visitors set by the caravan owner payable by a resident; and
- (c) the fees, if any, which the caravan park owner may charge for storage or removal of a caravan; and
- (d) the scale of commission which applies to the sale of a caravan by a caravan park owner.

Penalty: 5 penalty units.

- (2) A caravan park owner must give a resident at least 7 days written notice of any proposed change in any amount set out in subsection (1).

Penalty: 5 penalty units.

184 Owner to give additional information

- (1) If there is no agent acting for the caravan park owner, a caravan park owner must, on or before the required day, give the resident—
 - (a) written notice of the caravan park owner's full name and address for the service of documents; and
 - (b) an emergency telephone number to be used in the case of the need for urgent repairs.

Penalty: 5 penalty units.

- (2) If there is an agent acting for the caravan park owner, a caravan park owner must, on or before the required day, give the resident—
 - (a) written notice of the agent's full name and address for service of documents and the agent's telephone number; and
 - (b) a written statement setting out—
 - (i) whether or not the agent can authorise urgent repairs; and

(ii) if the agent can authorise urgent repairs, the maximum amount for repairs which the agent can authorise; and

(iii) the agent's telephone number for urgent repairs.

Penalty: 5 penalty units.

(3) A caravan park owner must give a resident notice in writing of any change in the information set out in subsection (1) or (2) before the end of 7 days after the change.

Penalty: 5 penalty units.

(4) In this section *required day* means a day 7 days after a person becomes a resident of the caravan park.

185 Caravan park rules

(1) A caravan park owner may from time to time make rules relating to the use, enjoyment, control and management of the caravan park.

(2) Without limiting subsection (1), rules may be made in relation to—

- (a) the making and abatement of noise;
- (b) motor vehicle speed limits within the caravan park;
- (c) the parking of motor vehicles;
- (d) the disposal of refuse;
- (e) the keeping of pets;
- (f) the playing of games and other sports activities;
- (g) the use and operation of communal facilities.

186 Duties relating to caravan park rules

- (1) A caravan park owner must give the resident at least 7 days written notice of any proposed change in the caravan park rules.

Penalty: 5 penalty units.

- (2) A caravan park owner must—
- (a) take all reasonable steps to ensure that the caravan park rules are observed by all residents; and
 - (b) ensure that the caravan park rules are reasonable and are enforced and interpreted consistently and fairly.

187 What if the caravan park rules are thought to be unreasonable?

- (1) A resident may apply to the Tribunal for an order declaring a caravan park rule to be unreasonable.

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S. 187(2)
repealed by
No. 52/1998
s. 236(h).

- (3) If the Tribunal considers that a caravan park rule is unreasonable, it may declare the rule invalid.
- (4) In making a declaration under subsection (3) the Tribunal must have regard to—
- (a) the location of the caravan park; and
 - (b) the number and characteristics of the residents; and
 - (c) the internal layout of the caravan park; and
 - (d) the amenities, improvements, facilities and other physical features of the caravan park; and
 - (e) the levels of rent and other charges paid by the residents.

Division 6—Repairs

188 Urgent repairs to caravans

- (1) A resident may arrange for urgent repairs to a caravan to be carried out if—
 - (a) the resident has taken reasonable steps to arrange for the caravan park owner or the caravan park owner's agent or the caravan owner or the caravan owner's agent to immediately carry out the urgent repairs to the caravan; and
 - (b) the resident is unable to get the caravan park owner or the caravan owner or the owner's agent to carry out those repairs.
- (2) If the resident carries out repairs under subsection (1)—
 - (a) the resident must give the caravan park owner or caravan owner 14 days written notice of the repairs carried out and the cost; and
 - (b) the caravan park owner or caravan owner is liable to reimburse the resident for the reasonable cost of the repairs or \$1000, whichever is less.
- (3) If urgent repairs are required to an item that uses or supplies water and that item does not have at least an A rating and that item cannot be repaired, the resident may replace it with an item that does have an A rating.

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- (4) This section does not apply—
- (a) to equipment or appliances supplied by the resident; or
 - (b) if there is no immediate danger to health and safety and the resident is able to use facilities in the communal areas of the caravan park; or
 - (c) if the caravan is owned by the resident.

189 Application to Tribunal for urgent repairs

- (1) A resident may apply to the Tribunal for an order requiring the caravan park owner or the caravan park owner's agent or the caravan owner or the caravan owner's agent to carry out specified urgent repairs if—
- (a) the resident cannot meet the cost of the repairs; or
 - (b) the repairs cost more than \$1000; or
 - (c) the caravan park owner or caravan owner has refused to pay the cost of the urgent repairs.
- (2) The Tribunal must hear an application under subsection (1) within 2 business days after the application is made.

190 Application to Director to investigate need for non-urgent repairs

- (1) A resident may apply to the Director to investigate whether the caravan park owner or caravan owner is in breach of a duty to ensure the caravan is maintained in good repair if—
- (a) the resident has given notice to the caravan park owner or caravan owner that repairs (other than urgent repairs) are required to the caravan; and

- (b) the caravan park owner or caravan owner has not carried out the repairs within 14 days after being given the notice.
- (2) An application under subsection (1) must be in writing.
- (3) On an application under subsection (1), the Director—
 - (a) must investigate; and
 - (b) may negotiate arrangements for the carrying out of repairs if the Director is satisfied that the caravan park owner or caravan owner is in breach of the duty to maintain the caravan in good repair; and
 - (c) must give a written report to the resident.

191 Application to Tribunal for non-urgent repairs

- (1) A resident may apply to the Tribunal for an order requiring the caravan park owner or caravan owner to carry out specified repairs if—
 - (a) the resident has received the Director's report under section 190; and
 - (b) the resident is still of the view that satisfactory arrangements have not been made for the carrying out of the repairs.
- (2) An application under subsection (1) must be made within 60 days of receiving the Director's report under section 190.

S. 191(2)
repealed by
No. 52/1998
s. 236(i),
new s. 191(2)
inserted by
No. 45/2002
s. 52(1).

* * * * *

S. 191(3)
repealed by
No. 52/1998
s. 236(i).

S. 191(4)
amended by
No. 45/2002
s. 52(2).

- (4) A resident may apply to the Tribunal for an order requiring the caravan park owner or caravan owner to carry out specified repairs without the Director's report under section 190 if the resident has not received that report within 90 days after the resident applied for that report.

192 What can the Tribunal order?

- (1) The Tribunal may make an order requiring the caravan park owner or caravan owner to carry out specified repairs if it is satisfied that the owner is in breach of the duty to maintain the caravan in good repair.
- (2) The order must specify the repairs and the time within which they must be carried out.

193 Payment of hiring charge into Rent Special Account

- (1) If a resident has given notice under section 190 requiring repairs to be carried out, the resident may apply to the Tribunal for an order authorising the payment of the hiring charge into the Rent Special Account.
- (2) The Tribunal may make an order authorising the resident to pay the hiring charge into the Rent Special Account for a period specified by the Tribunal if it is satisfied that—
- (a) a notice requiring the carrying out of repairs has been given to the caravan park owner or the caravan owner in accordance with this Act; and
 - (b) the caravan park owner or caravan owner has failed to comply with the duty to carry out the repairs.

- (3) If an order is made under subsection (2)—
- (a) the amount of the hiring charge held in the Rent Special Account at the end of that period must be paid to the caravan park owner or caravan owner; and
 - (b) on application by the caravan park owner or caravan owner, the Tribunal may order that the whole or such part of the hiring charge as it may determine be paid to the caravan park owner or caravan owner before the end of that period, if it is satisfied that the owner has fulfilled or is fulfilling the owner's duty to carry out the repairs.

194 Repair provisions not applicable to certain damage

Sections 190 to 193 do not apply to damage caused by the misuse or the negligence of the resident or his or her visitor.

Division 7—Transfer of rights and sale of caravans and movable dwellings

195 Transfer of residency right

- (1) If a resident who occupies a site in a caravan owned by the resident sells the caravan, the resident, with the consent of the caravan park owner, may transfer his or her residency right to the purchaser of the caravan by a transfer in a form approved by the Minister.
- (2) A caravan park owner must not unreasonably withhold consent to a transfer under subsection (1).

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- (3) A caravan park owner is deemed to have consented to a transfer under subsection (1) if—
- (a) the resident—
 - (i) has given the caravan park owner a completed transfer form and the names in writing of any persons proposing to occupy the caravan with the proposed resident; and
 - (ii) has requested the caravan park owner to consent by signing the transfer; and
 - (b) the caravan park owner has not consented or refused to consent within 7 days of being given the completed transfer form.
- (4) A purchaser of a caravan who obtains a residency right on a site by transfer must occupy the caravan himself or herself.

196 What if the caravan park owner unreasonably withholds consent to transfer?

- (1) A resident may apply to the Tribunal for an order that the caravan park owner has unreasonably withheld consent to a transfer.
- (2) The Tribunal may—
 - (a) dismiss the application if it is satisfied that in all the circumstances the withholding of consent was reasonable; or
 - (b) make an order that the withholding of consent was unreasonable and the transfer may go ahead without the caravan park owner's consent.

197 Owner must not charge fee for transfer of resident's rights

A caravan park owner must not charge a fee as a condition of or in consideration of the caravan park owner consenting to a resident transferring his or her residency right.

198 Sale of caravan

- (1) A caravan park owner must not enter into an agreement to sell a caravan on behalf of a resident or former resident unless the caravan park owner has complied with section 183 in relation to the scale of commission charged for the sale.

Penalty: 5 penalty units.

- (2) A caravan park owner must not by act or omission obstruct or hinder the sale of a caravan owned by a resident.

Penalty: 20 penalty units.

Division 8—Rights of entry

199 Entry of caravan by caravan park owner

A caravan park owner or a person appointed in writing as the caravan park owner's agent for the purpose has a right to enter a caravan or site occupied by a resident—

- (a) if the resident agrees at the time entry is sought; or
- (b) if there is an emergency and immediate entry is necessary to save life or valuable property; or
- (c) if the Tribunal has made an abandonment order under section 301; or

- (d) for a purpose set out in section 201, at any time between 8 a.m. and 6 p.m. on any day (except a public holiday) if at least 24 hours notice has been given to the resident in accordance with section 203.

200 Entry of caravan by caravan owner

A caravan owner or a person appointed in writing as the caravan owner's agent for the purpose has a right to enter a caravan occupied by a resident—

- (a) if the resident agrees at the time entry is sought; or
- (b) if the Tribunal has made an abandonment order under section 301; or
- (c) for a purpose set out in section 201, at any time between 8 a.m. and 6 p.m. on any day (except a public holiday) if at least 24 hours notice has been given to the resident in accordance with section 203.

201 Grounds for entry of caravan or site

A right of entry in respect of a caravan or site may be exercised if—

- (a) before giving notice of entry, a notice to vacate or a notice of intention to vacate the caravan or site has been given and entry is required to show the caravan or site to a prospective resident; or
- (b) the caravan is to be sold or used as security for a loan and entry is required to show the caravan to a prospective buyer or lender; or
- (c) entry is required to enable the caravan park owner or caravan owner to carry out a duty under this Act or any other Act; or

- (d) the caravan park owner or the caravan owner or the owner's agent has reasonable grounds to believe that the resident has failed to comply with his or her duties under this Act; or
- (e) entry is required to enable inspection—
 - (i) of the site; and
 - (ii) if the resident is not the caravan owner, of the caravan—and entry for that purpose has not been made within the last 6 months.

202 Manner of entry

A person exercising a right of entry under this Division—

- (a) must do so in a reasonable manner; and
- (b) must not stay in the caravan or on the site longer than is necessary to achieve the purpose of the entry without the resident's consent.

203 What must be in a notice of entry?

A notice requiring entry must—

- (a) be in writing; and
- (b) state why the caravan park owner, caravan owner or the owner's agent wishes to enter; and
- (c) be given—
 - (i) by post; or
 - (ii) by delivering it personally to the resident between the hours of 8 a.m. and 6 p.m.

204 Resident has duty to permit entry

A resident of a caravan park has a duty to permit a person exercising a right of entry in accordance with this Division to enter the caravan or site (as the case may be).

205 What if damage is caused during entry?

- (1) A resident of a caravan park may apply to the Tribunal for an order for compensation if the caravan park owner or the caravan owner or the owner's agent causes damage to the resident's goods in the caravan or on the site when exercising a right of entry under section 199 or 200.
- (2) If an application is made under subsection (1), the Tribunal—
 - (a) may make an order for payment of any compensation that it thinks fit if it is satisfied that damage was caused to the resident's goods in the caravan or on the site; or
 - (b) may refuse to make an order.

206 What if a person exercising right of entry fails to comply with Division?

- (1) If the caravan park owner or caravan owner or the owner's agent has exercised a right of entry and in doing so fails to comply with this Division, the resident may apply to the Tribunal for an order restraining the caravan park owner or caravan owner or the owner's agent from exercising a right of entry under section 199 or 200 for a specified period.

- (2) If an application is made under subsection (1), the Tribunal—
- (a) may make an order prohibiting the caravan park owner or caravan owner or the owner's agent from exercising a right of entry under section 199 or 200 (except for a purpose set out in section 201(c) or (d)) during the period specified in the order if it is satisfied that it is reasonable to do so; or
 - (b) may refuse to make an order.

206A Offence relating to entering a site or caravan occupied by a resident

S. 206A
inserted by
No. 45/2002
s. 53.

A caravan park owner, a caravan owner or an owner's agent must not, without reasonable excuse, enter a site or caravan occupied by a resident otherwise than in accordance with this Division.

Penalty: 5 penalty units.

PART 5—COMPENSATION AND COMPLIANCE

207 Definitions

In this Part—

duty provision means—

S. 207 def. of
duty provision
amended by
No. 45/2002
s. 87(1).

- (a) in relation to rented premises—
 - (i) section 89; or
 - (ii) any provision of Division 5 of Part 2, except sections 59, 62, 66 and 71; or
- (b) in relation to a rooming house—
 - (i) section 140; or
 - (ii) any provision of Division 5 of Part 3, except section 111; or
- (c) in relation to a caravan park—
 - (i) section 204; or
 - (ii) any provision of Division 5 of Part 4, except section 168;

required time means—

S. 207 def. of
required time
amended by
No. 45/2002
s. 87(2)(a)(b).

- (a) in relation to rented premises—
 - (i) for a duty under section 89 in relation to a right of entry for a purpose set out in section 86(1)(a), (c) or (f), 14 days; or
 - (ia) for a duty under section 89 in relation to a right of entry for a purpose set out in section 86(1)(b), (d) or (e), 3 days; or
 - (ii) for a duty under Division 5 of Part 2, 14 days; or
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- (b) in relation to a rooming house, for a duty under section 140 or Division 5 of Part 3, 3 days; or
 - (c) in relation to a caravan park—
 - (i) for a duty under section 204 in relation to a right of entry for a purpose set out in section 201(a), (c) or (e), 7 days; or
 - (ia) for a duty under section 204 in relation to a right of entry for a purpose set out in section 201(b) or (d), 3 days; or
 - (ii) for a duty under Division 5 of Part 4, 7 days.

208 Breach of duty notice

- (1) A person to whom a duty is owed under a duty provision or that person's agent, may give a breach of duty notice to a person in breach of that duty.
- (2) A notice under subsection (1) must—
 - (a) specify the breach; and
 - (b) give details of the loss or damage caused by the breach; and
 - (c) require the person, within the required time after receiving the notice—
 - (i) to remedy the breach if possible; or
 - (ii) to compensate the person to whom the duty is owed; and
 - (d) state that the person in breach must not commit a similar breach again; and

s. 209

S. 208(2)(e)
substituted by
No. 45/2002
s. 88(a).

- (e) state that if the notice is not complied with—
- (i) an application for compensation or a compliance order may be made to the Tribunal; or
 - (ii) if section 240 applies, a notice of intention to vacate may be given; or
 - (iii) if section 249, 283 or 308 (as the case requires) applies, a notice to vacate may be given; and
- (f) be in writing; and
- (g) be addressed to the person allegedly in breach of the duty or his or her agent; and
- (h) be signed by the person to whom the duty is owed or by that person's agent.

S. 208(2)(h)
amended by
No. 45/2002
s. 88(b).

209 Application for compensation or compliance order for breach of duty

If a breach of duty notice is not complied with, the person who gave it may apply to the Tribunal for a compensation order or a compliance order.

S. 209A
inserted by
No. 45/2002
s. 77.

209A Tribunal must hear application urgently

The Tribunal must hear an application under section 209 within 5 business days after the application is made if the application relates to—

- (a) a breach of section 89 in relation to a right of entry for a purpose set out in section 86(1)(b); or
- (b) a breach of section 140 in relation to a right of entry for a purpose set out in section 137(b); or
- (c) a breach of section 204 in relation to a right of entry for a purpose set out in section 201(b).

210 Application to Tribunal for compensation order on other grounds

- (1) A party to a tenancy agreement may apply to the Tribunal for an order for payment to the applicant by the other party to the tenancy agreement of compensation for loss or damage suffered by the applicant because—
- (a) the other party failed to comply with the tenancy agreement or that party's duties under this Act relating to the tenancy agreement; or
 - (b) the applicant has paid to the other party more than the applicant is required to pay in accordance with this Act or the tenancy agreement.
- (2) This section does not apply to a duty under a duty provision or section 66.

210A Application to Tribunal by resident for compensation

S. 210A
inserted by
No. 63/2005
s. 23.

If a rooming house owner fails to comply with section 94B, 529 or 531 in relation to a resident, the resident may apply to the Tribunal for an order under section 212(2A).

211 Matters which may be considered by Tribunal

S. 211
amended by
No. 63/2005
s. 24.

The Tribunal, in hearing an application under section 209, 210 or 210A, may take into account—

- (a) whether or not the person from whom compensation is claimed has taken all reasonable steps to comply with the duties under this Act or under the tenancy agreement in respect of which the claim is made; and

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- (b) in the case of a breach of a tenancy agreement, whether or not the applicant has consented to the failure to comply with the duties in respect of which the claim is made; and
 - (c) whether or not money has been paid to or recovered by the applicant by way of compensation, including money recovered or entitled to be recovered from the bond; and
 - (d) whether any reduction or refund of rent or other allowance has been made to the applicant; and
 - (e) whether or not action has been taken by the applicant to mitigate the loss or damage; and
 - (f) any offer of compensation; and
 - (g) if a claim is made with respect to damage to property, any action taken by the person from whom compensation is claimed to repair the damage at that person's own expense.

212 Orders of Tribunal

- (1) In the case of an application under section 209, if the Tribunal is satisfied that the person was entitled to give the notice and that it was not complied with it may make any or all of the following orders—
 - (a) the person in breach must remedy the breach as specified in the order;
 - (b) the person in breach must pay compensation as specified in the order;
 - (c) the person in breach must refrain from committing a similar breach.

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- (2) In the case of an application under section 210, if the Tribunal is satisfied that compensation should be paid it may make an order directing a person to pay compensation as specified in the order.
- (2A) In the case of an application under section 210A, if the Tribunal is satisfied that a rooming house owner has failed to comply with section 94B, 529 or 531—
- (a) the Tribunal may make an order requiring the rooming house owner to comply with that provision; and
 - (b) if the Tribunal is satisfied that compensation should be paid it may make an order directing the rooming house owner to pay compensation as specified in the order.
- (3) If an application is in relation to an alleged breach of house rules or caravan park rules, in addition to the orders set out in subsection (1), or instead of those orders, the Tribunal may declare the rule to be invalid.
- (4) If an order is made against a tenant or resident, the order must specify that if the order is not complied with, the tenant or resident may be given a notice to vacate the rented premises, room or site.
- (5) If an order for compensation is made in favour of a tenant or resident, the order may specify that the compensation be in the form of a refund or reduction of the rent or hiring charges payable by the tenant or resident.

S. 212(2A)
inserted by
No. 63/2005
s. 25(1).

S. 212(5)
amended by
No. 63/2005
s. 25(2).

213 Compensation for unpaid rent

- (1) A landlord is not entitled to claim compensation under this Act for a failure of a tenant to pay rent under a tenancy agreement unless the rent is unpaid for at least 14 days after it has accrued due.
- (2) Subsection (1) does not apply if the tenant on not less than 2 previous occasions has failed to pay the rent under the same tenancy agreement within 14 days after it has accrued due.

S. 213(3)
repealed by
No. 45/2002
s. 78.

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S. 213A
inserted by
No. 45/2002
s. 79.

213A Application for payment of rent arrears or hiring charge arrears from bond

- (1) If an application for a possession order is made under Part 7 as a result of a failure by a tenant or a resident to pay rent or, in the case of a caravan, a failure by the resident to pay a hiring charge, the applicant, at the same time, may apply to the Tribunal for payment of compensation by the tenant or resident for the unpaid rent or hiring charge owed.
- (2) On an application under subsection (1), the Tribunal may—
 - (a) make a determination of the amount of rent owing to the landlord, rooming house owner or caravan park owner or, in the case of a caravan owner, the amount of hiring charge owing to the caravan owner, at the date of the application; and

- (b) make a determination directing the Authority, on termination of the tenancy agreement or when the residency right ends, to pay out an amount of bond to or on account of the landlord, rooming house owner, caravan park owner or caravan owner (as the case requires) in respect of the rent or hiring charge owing.

213B Application by landlord to Tribunal for loss or damage

S. 213B
inserted by
No. 45/2002
s. 79.

If a possession order is made under Part 7 as a result of a failure by a tenant to pay rent, an application by the landlord to the Tribunal under this Part (other than under section 213A) for payment by the tenant of compensation for loss or damage suffered by the landlord as a result of the failure of the tenant to pay rent must be made within 28 days after the tenant delivers up vacant possession of the rented premises.

214 Can a person recover compensation under this Part as well as from a bond?

- (1) A person who has recovered compensation from a bond is not precluded from taking proceedings under this Part to recover an additional amount by way of compensation.

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S. 214(2)
repealed by
No. 52/1998
s. 236(j).

215 What powers does a court have to award compensation?

If a party to a tenancy agreement is convicted of an offence against this Act, the court before which that person is convicted may, on application by the other party to the tenancy agreement, order the first party to pay to the applicant compensation for loss or damage suffered by the applicant because of the commission of that offence.

PART 6—TERMINATION

Division 1—Termination of residential tenancies

Subdivision 1—When can a tenancy agreement be terminated?

216 Termination of tenancy agreement

Despite any Act or law to the contrary, a tenancy agreement does not terminate and must not be terminated except in accordance with this Division or Part 7 or 8.

217 Termination by agreement

A tenancy agreement may be terminated by agreement of the landlord and tenant.

218 Termination by consent

- (1) A tenancy agreement terminates if the tenant vacates the rented premises with the consent of the landlord.
- (2) The consent, once given, is irrevocable.

219 Termination after notice to vacate

A tenancy agreement terminates if the landlord or the tenant gives a notice to vacate or a notice of intention to vacate the rented premises under this Division and—

- (a) the tenant vacates the rented premises on or after the termination date specified in the notice; or
- (b) the tenancy agreement terminates in accordance with section 334 or 342.

220 Termination by abandonment

A tenancy agreement terminates if the tenant abandons the rented premises.

221 Termination where premises are sub-let

A tenancy agreement terminates if—

- (a) the tenant is not in possession of the rented premises because the tenant has sub-let them; and
- (b) the landlord or tenant gives a notice to vacate or a notice of intention to vacate the rented premises under this Division; and
- (c) the period (if any) between the date on which the notice is given and the termination date specified in the notice has expired.

222 Termination where landlord not owner of premises

A tenancy agreement terminates if the owner of the rented premises gives a notice to vacate in accordance with section 267 and—

- (a) the tenant vacates the rented premises on or after the termination date specified in the notice; or
- (b) the tenancy agreement terminates in accordance with section 334 or 342.

223 Termination by mortgagee

A tenancy agreement terminates if a mortgagee in respect of rented premises gives a notice to vacate under section 268 and—

- (a) the tenant vacates the rented premises on or after the termination date specified in the notice; or
- (b) the tenancy agreement terminates in accordance with section 334.

224 Termination by merger

A tenancy agreement may terminate by merger (that is, where the interests of the landlord and the tenant become vested in one person).

225 Termination by disclaimer

A tenancy agreement may terminate by disclaimer (for example, on repudiation of the agreement by the tenant accepted by the landlord).

226 Termination by tenant before possession

A tenancy agreement terminates if the tenant has not entered into possession of the rented premises and has given a notice of termination of the tenancy agreement to the landlord on the ground that the premises—

- (a) are not in good repair; or
- (b) are unfit for human habitation; or
- (c) are destroyed totally or to such an extent as to be rendered unsafe; or
- (d) are not vacant; or
- (e) are not legally available for use as a residence; or
- (f) are for any other reason unavailable for occupation.

227 Termination by landlord before possession

A tenancy agreement terminates if the tenant has not entered into possession of the rented premises and the landlord has given a notice of termination of the tenancy agreement to the tenant on the ground that the premises—

- (a) are unfit for human habitation; or
- (b) are destroyed totally or to such an extent as to be rendered unsafe.

S. 228
substituted by
No. 45/2002
s. 20.

228 Termination after death of sole tenant

- (1) If a tenant dies, the tenancy agreement terminates at the earliest of the following dates—
 - (a) 28 days after the landlord has been given written notice of the death of the tenant by the legal personal representative or next of kin of the tenant; or
 - (b) 28 days after the landlord has given a notice to vacate to the legal personal representative or next of kin of the tenant; or
 - (c) a date agreed in writing between the landlord and the legal personal representative or next of kin of the tenant; or
 - (d) the date determined as the termination date of the tenancy agreement by the Tribunal on the application of the landlord under subsection (2).
- (2) If a landlord is unable to give notice to vacate under subsection (1)(b), the landlord may apply to the Tribunal for an order to terminate the tenancy.
- (3) This section does not apply if there is more than one tenant under the tenancy agreement.

229 Offence to obtain possession etc. of premises

- (1) A landlord or a person acting on behalf of a landlord must not, except in accordance with this Act—
 - (a) require or compel or attempt to compel the tenant under the tenancy agreement to vacate the rented premises; or
 - (b) obtain or attempt to obtain possession of the rented premises by entering them, whether the entry is peaceable or not.

Penalty: 20 penalty units.

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- (2) It is a good defence to a prosecution of a person for an offence against subsection (1)(b) if the person proves that he or she obtained or attempted to obtain possession of rented premises because he or she believed on reasonable grounds that the tenant had abandoned the premises.

Subdivision 2—Variations or creations of tenancy

230 Creation of periodic tenancy

- (1) A tenant is deemed to occupy rented premises under a periodic tenancy agreement if—
- (a) the term of a fixed term tenancy agreement to which this Act applies ends; and
 - (b) the tenant under that agreement continues in occupation of the rented premises otherwise than as a tenant under a fixed term tenancy agreement.
- (2) The rental period under the periodic tenancy agreement created by subsection (1) is—
- (a) if the rental period under the fixed term tenancy agreement was more than 1 month, a monthly period; and
 - (b) if the rental period under the fixed term tenancy agreement was 1 month or less, a period equivalent to that rental period.
- (3) Except as provided in subsection (2), the periodic tenancy agreement is on the same terms, so far as applicable, as the terms of the fixed term tenancy agreement.
- (4) On the application of the landlord or the tenant, the Tribunal may make any variations to the terms of a periodic tenancy agreement created under this section that are necessary for or appropriate to the continuation of the agreement.

231 New tenancy created where head tenancy terminated

- (1) A person becomes the tenant of the landlord in respect of rented premises if—
 - (a) the person is in possession of the premises under a tenancy agreement (a *sub-tenancy agreement*) granted to him or her by a person who is a tenant of the premises under another tenancy agreement (the *head tenancy agreement*) granted to him or her by the landlord; and
 - (b) the head tenancy agreement terminates or is terminated; and
 - (c) the sub-tenancy agreement does not terminate or is not terminated in accordance with this Act.
- (2) The tenancy created under subsection (1) is deemed to be under a tenancy agreement on the same terms, as far as applicable, as the terms of the sub-tenancy agreement.
- (3) Subsection (1) applies whether or not this Act applied at any time to the head tenancy agreement.

232 Application to Tribunal for creation of tenancy agreement

- (1) A person who has been residing in rented premises as his or her principal place of residence and who is not a party to a tenancy agreement applying to those premises may apply to the Tribunal for an order requiring the landlord of the premises to enter into a tenancy agreement with the person if—
 - (a) an application for a possession order for the premises has been made under Part 7; or
 - (b) the tenant has abandoned the rented premises; or
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- (c) the tenant has delivered up vacant possession of the rented premises; or
- (d) the tenant has given a notice of intention to vacate the rented premises; or
- (e) the tenant has died and there is no surviving tenant.

S. 232(1)(d)
amended by
No. 45/2002
s. 21(1).

S. 232(1)(e)
inserted by
No. 45/2002
s. 21(2).

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S. 232(2)
repealed by
No. 52/1998
s. 236(k).

- (3) This section does not apply to a person who becomes a tenant of a landlord under section 231.

233 Order of Tribunal

- (1) The Tribunal may make an order requiring the landlord to enter into a tenancy agreement with the applicant under section 232 if the Tribunal is satisfied that—
 - (a) the applicant could reasonably be expected to comply with the duties of a tenant under a tenancy agreement to which this Act applies; and
 - (b) the applicant would be likely to suffer severe hardship if he or she were compelled to leave the premises; and
 - (c) the hardship suffered by the applicant would be greater than any hardship that the landlord would suffer if the order were made.
- (2) The tenancy agreement must—
 - (a) be entered into before the end of the time stated in the order; and

- (b) be on the same terms and conditions as the tenancy agreement in force in respect of the rented premises before the order is made, subject to any changes that the Tribunal determines.

234 Reduction of fixed term tenancy agreement

- (1) On the application of a party to a fixed term tenancy agreement, the Tribunal may make an order—
 - (a) reducing the term of the agreement by a period stated in the order; and
 - (b) making any variations to the terms of the agreement that are necessary because of the reduction of the term.
- (2) The Tribunal may only make an order under this section if it is satisfied that, because of an unforeseen change in the applicant's circumstances, the severe hardship which the applicant would suffer if the term of the agreement were not reduced would be greater than the hardship which the other party would suffer if the term were reduced.
- (3) In making an order under this section, the Tribunal may determine the compensation (if any) to be paid by the applicant for the order to the other party because of the reduction in the term of the tenancy agreement.

Subdivision 3—Notice or abandonment by tenant

235 Notice of intention to vacate

- (1) A tenant may give a landlord a notice of intention to vacate rented premises.
- (2) The notice must specify a termination date that is not less than 28 days after the date on which the notice is given.

236 Notice to have no effect in certain circumstances

A notice given under section 235 in respect of a fixed term tenancy agreement is of no effect—

- (a) if the agreement includes a provision enabling the landlord or the tenant to determine the agreement by notice (otherwise than on the grounds of a breach of the agreement) if—
 - (i) the period after the giving of the notice and before the termination date specified in the notice is less than the period of notice required under that provision; or
 - (ii) the termination date specified in the notice is a date other than a date on which under that provision the agreement may be determined; or
- (b) in any other case, if it specifies a termination date that is earlier than the end of the term of the tenancy agreement.

237 Reduced period of notice of intention to vacate in certain circumstances

- (1) This section applies to a tenant if—
 - (a) the tenant has been given a notice to vacate under section 255, 256, 257, 258, 259, 260, 262 or 263; or
 - (b) the tenant requires special or personal care and needs to vacate the rented premises in order to obtain that care; or
 - (c) the tenant has received a written offer of public housing from the Director of Housing; or

S. 237(1)(c)
amended by
No. 45/2002
s. 59(a).

S. 237(1)(d)
inserted by
No. 45/2002
s. 59(b).

- (d) the tenant requires temporary crisis accommodation and needs to vacate the rented premises in order to obtain that accommodation.
- (2) A tenant to whom this section applies may give a landlord a notice of intention to vacate rented premises under a fixed term tenancy agreement specifying a termination date that is on or after the end of the term of the tenancy agreement if the period between the date on which the notice is given and the termination date is not less than 14 days.
- (3) A tenant to whom this section applies may give a landlord a notice of intention to vacate rented premises under a periodic tenancy specifying a termination date that is not less than 14 days after the date on which the notice is given.
- (4) In this section *special or personal care* means—
- (a) assistance with one or more of the following—
 - (i) bathing, showering or personal hygiene;
 - (ii) toileting;
 - (iii) dressing or undressing;
 - (iv) meals; or
 - (b) physical assistance for persons with mobility problems; or
 - (c) assistance for persons who are mobile but require some form of supervision or assistance; or
 - (d) assistance or supervision in dispensing medicine; or
 - (e) the provision of substantial emotional support in a health or residential service.

238 Premises destroyed or unfit for habitation

- (1) A tenant may give a landlord a notice of intention to vacate rented premises if the premises—
 - (a) are unfit for human habitation; or
 - (b) have been destroyed totally or to such an extent as to be rendered unsafe.
- (2) The notice may specify a termination date that is the date on which the notice is given or a later date.

239 Failure of landlord to comply with Tribunal order

- (1) A tenant may give a landlord a notice of intention to vacate rented premises if the landlord fails to comply with an order of the Tribunal under section 212.
- (2) The notice must specify a termination date that is not less than 14 days after the date on which the notice is given.

240 Successive breaches by landlord

- (1) A tenant under a fixed-term tenancy agreement may give a landlord a notice of intention to vacate rented premises if—
 - (a) the landlord has breached a duty provision within the meaning of Part 5; and
 - (b) on 2 previous occasions the landlord has been in breach of the same provision; and
 - (c) the tenant or the tenant's agent has on each occasion given a breach of duty notice to the landlord under section 208.

S. 240(1)(c)
amended by
No. 45/2002
s. 89(1)(a).

* * * * *

S. 240(1)(d)
repealed by
No. 45/2002
s. 89(1)(b).

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

241 Order of Tribunal that premises are abandoned

- (1) If a landlord believes that a tenant has abandoned rented premises, the landlord may apply to the Tribunal for an order declaring that the tenant has abandoned them.
- (2) An application under subsection (1) must be heard by the Tribunal within 5 business days after the application is made.
- (3) On an application under subsection (1), the Tribunal may by order declare that the rented premises were abandoned by the tenant on a day specified by the Tribunal.
- (4) The tenant is deemed to have abandoned the rented premises on that specified day.

S. 241(2)
amended by
No. 45/2002
s. 80.

242 Abandoned premises and rent in advance

- (1) If a tenant abandons rented premises and the landlord has received an amount of rent in respect of the premises that had not accrued due when the tenant abandoned them, the landlord is entitled to the lesser of—
- (a) that amount; or
 - (b) such part of that amount as does not exceed the amount of loss or damage suffered as a result of the abandonment.
- (2) If the landlord knows the address of the tenant, the landlord must pay to the tenant the amount of rent to which the landlord is not entitled.

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- (3) If the landlord does not know the address of the tenant, the amount to which the landlord is not entitled must be dealt with in accordance with Part 3 of the **Unclaimed Moneys Act 1962** as if the landlord were a business to which that Part applies.

Subdivision 4—Notice by landlord, owner or mortgagee

243 Damage

- (1) A landlord may give a tenant a notice to vacate rented premises if by the conduct (by act or omission) of the tenant or the tenant's visitor damage is maliciously caused to the premises or common areas.
- (2) The notice may specify a termination date that is the date on which the notice is given or a later date.

244 Danger

- (1) A landlord may give a tenant a notice to vacate rented premises if the tenant or the tenant's visitor by act or omission endangers the safety of occupiers of neighbouring premises.
- (2) The notice may specify a termination date that is the date on which the notice is given or a later date.
- (3) A landlord is not entitled to give a notice to vacate under subsection (1) if a notice to leave under section 368 has been given in respect of that act or omission.

S. 244(3)
substituted by
No. 45/2002
s. 22.

245 Condition of premises

- (1) A landlord may give a tenant a notice to vacate rented premises if the premises—
 - (a) are unfit for human habitation; or
 - (b) have been destroyed totally or to such an extent as to be rendered unsafe.
- (2) The notice may specify a termination date that is the date on which the notice is given or a later date.

246 Non-payment of rent

- (1) A landlord may give a tenant a notice to vacate rented premises if the tenant owes at least 14 days rent to the landlord.
- (2) The notice must specify a termination date that is not less than 14 days after the date on which the notice is given.

247 Failure to pay bond

- (1) The landlord may give the tenant a notice to vacate rented premises if the tenant fails to comply with a provision of the tenancy agreement relating to the payment of a bond.
- (2) The notice must specify a termination date that is not less than 14 days after the date on which the notice is given.

248 Failure to comply with Tribunal order

- (1) A landlord may give a tenant a notice to vacate rented premises if the tenant fails to comply with an order of the Tribunal under section 212.
- (2) The notice must specify a termination date that is not less than 14 days after the date on which the notice is given.

249 Successive breaches by tenant

- (1) A landlord may give a tenant a notice to vacate rented premises if—
- (a) the tenant has breached a duty provision within the meaning of Part 5; and
 - (b) on 2 previous occasions the tenant has been in breach of the same provision; and
 - (c) the landlord or the landlord's agent has on each occasion given a breach of duty notice to the tenant under section 208.

S. 249(1)(c)
amended by
No. 45/2002
s. 89(2)(a).

* * * * *

S. 249(1)(d)
repealed by
No. 45/2002
s. 89(2)(b).

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

250 Use of premises for illegal purpose

- (1) A landlord may give a tenant a notice to vacate rented premises if the tenant has used the rented premises or permitted their use for any purpose that is illegal at common law or under an Act.
- (2) The notice must specify a termination date that is not less than 14 days after the date on which the notice is given.

251 Permitting child to reside in premises

- (1) A landlord may give a tenant a notice to vacate rented premises if the tenant has failed to comply with a term of the tenancy agreement prohibiting the tenant from permitting a child under the age of 16 years to reside on the rented premises.
- (2) The notice must specify a termination date that is not less than 14 days after the date on which the notice is given.

252 False statement to housing authority

- (1) A landlord which is a public statutory authority engaged in the provision of housing may give a tenant a notice to vacate rented premises if the authority was induced to enter the tenancy agreement by a statement by the tenant—
 - (a) which related to a matter on which eligibility to rent the premises depended; and
 - (b) which the tenant knew to be false or misleading.
- (2) The notice must specify a termination date that is not less than 14 days after the date on which the notice is given.

253 Assignment or sub-letting without consent

- (1) A landlord may give a tenant a notice to vacate rented premises if the tenant has assigned or sub-let or purported to assign or sub-let the whole or any part of the premises without the landlord's consent.
- (2) The notice must specify a termination date that is not less than 14 days after the date on which the notice is given.

254 Landlord's principal place of residence (fixed term tenancy)

- (1) A landlord under a fixed term tenancy agreement may, before the end of the term of the tenancy agreement, give the tenant a notice to vacate rented premises if—
 - (a) the rented premises were the landlord's principal place of residence—
 - (i) immediately before the tenancy agreement was entered into; or

S. 254(1)
substituted by
No. 45/2002
s. 23(1).

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- (ii) if the tenancy agreement is the second tenancy agreement entered into since the premises were the landlord's principal place of residence, immediately before the first tenancy agreement was entered into; and
 - (b) the tenancy agreement states that the rented premises were the landlord's principal place of residence—
 - (i) immediately before the tenancy agreement was entered into; or
 - (ii) if the tenancy agreement is the second tenancy agreement entered into since the premises were the landlord's principal place of residence, immediately before the first tenancy agreement was entered into; and
 - (c) the tenancy agreement states that the landlord intends to resume occupancy of the premises on the termination of the agreement.
- (2) The notice may specify a termination date that is the date of the end of the term or a later date.
 - (3) The notice must specify a termination date that is not less than 14 days after the date on which the notice is given.
 - (4) A landlord is not entitled to give a notice under this section if the landlord has entered into more than 2 tenancy agreements in respect of the premises since the premises were the landlord's principal place of residence.

**S. 254(4)
inserted by
No. 45/2002
s. 23(2).**

255 Repairs

- (1) A landlord may give a tenant a notice to vacate rented premises if—
 - (a) the landlord intends to repair, renovate or reconstruct the premises—
 - (i) in the case of a building owned by a landlord containing 5 or more rented premises, immediately after the last tenant vacates; or
 - (ii) in any other case, immediately after the termination date; and
 - (b) the landlord has obtained all necessary permits and consents to carry out the work; and
 - (c) the work cannot be properly carried out unless the tenant vacates the rented premises.
- (2) The notice must specify a termination date that is not less than 60 days after the date on which the notice is given.

256 Demolition

- (1) A landlord may give a tenant a notice to vacate rented premises if—
 - (a) the landlord intends to demolish the premises—
 - (i) in the case of a building owned by a landlord containing 5 or more rented premises, immediately after the last tenant vacates; or
 - (ii) in any other case, immediately after the termination date; and
 - (b) the landlord has obtained all necessary permits and consents to demolish the premises.
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- (2) The notice must specify a termination date that is not less than 60 days after the date on which the notice is given.

257 Premises to be used for business

- (1) A landlord may give a tenant a notice to vacate rented premises if the premises are immediately after the termination date to be used for the purposes of a business or for any purpose other than letting for use principally as a residence.
- (2) The notice must specify a termination date that is not less than 60 days after the date on which the notice is given.

258 Premises to be occupied by landlord or landlord's family

- (1) A landlord may give a tenant a notice to vacate rented premises if the premises are immediately after the termination date to be occupied—
- (a) by the landlord; or
 - (b) in the case of a landlord who is an individual—
 - (i) by the landlord's partner, son, daughter, parent or partner's parent; or
 - (ii) by another person who normally lives with the landlord and is wholly or substantially dependent on the landlord.
- (2) The notice must specify a termination date that is not less than 60 days after the date on which the notice is given.

S. 258(1)(b)(i) amended by No. 27/2001 s. 3(Sch. 1 item 10.3(a)(b)).

259 Premises to be sold

- (1) A landlord may give a tenant a notice to vacate rented premises if the premises are immediately after the termination date to be sold or offered for sale with vacant possession.
- (2) If a landlord has entered into a contract of sale of the rented premises and the contract of sale is subject to one or more conditions which, if not satisfied, entitle a party to the contract to terminate the contract, the landlord may, within 14 days after the last of those conditions is satisfied, give a tenant a notice to vacate the rented premises.
- (2A) If a landlord has entered into a contract of sale of the rented premises which is not a contract of sale of the kind referred to in subsection (2), the landlord may, within 14 days after the contract of sale is entered into, give a tenant a notice to vacate the rented premises.
- (3) A notice under this section must specify a termination date that is not less than 60 days after the date on which the notice is given.

S. 259(2)
substituted by
No. 45/2002
s. 24.

S. 259(2A)
inserted by
No. 45/2002
s. 24.

260 Premises required for public purposes

- (1) A landlord may give a tenant a notice to vacate rented premises if the premises are the property of a public statutory authority authorised to acquire land compulsorily for its purposes and immediately after the termination date the premises are required for public purposes.
- (2) The notice must specify a termination date that is not less than 60 days after the date on which the notice is given.

261 End of fixed term tenancy

- (1) A landlord under a fixed term tenancy agreement may, before the end of the term of the tenancy agreement, give the tenant a notice to vacate the rented premises at the end of the fixed term.
- (2) The notice must specify a termination date that is the date of the end of the term.
- (3) The notice must be given—
 - (a) in the case of a fixed term tenancy agreement for a fixed term of 6 months or more, not less than 90 days before the end of the fixed term; or
 - (b) in the case of a fixed term tenancy agreement for a fixed term of less than 6 months, not less than 60 days before the end of the fixed term.

262 Tenant no longer meets eligibility criteria

- (1) A landlord which is a public statutory authority engaged in the provision of housing may give a tenant a notice to vacate rented premises if—
 - (a) the rented premises are premises only available to be let to persons who meet the eligibility criteria for housing published by the public statutory authority under subsection (3); and
 - (b) the tenant ceases to meet one or more of the eligibility criteria.
 - (2) The notice must specify a termination date that is not less than 90 days after the date on which the notice is given.
 - (3) A public statutory authority, by notice published in the Government Gazette, may publish its criteria for eligibility for the provision of housing by that public statutory authority.
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S. 262A
inserted by
No. 45/2002
s. 25.

262A Tenant in transitional housing refuses alternative accommodation

- (1) A landlord which is the Director of Housing or a delegate of the Director of Housing may give a tenant a notice to vacate rented premises if—
 - (a) the rented premises were provided as transitional housing; and
 - (b) the Director of Housing, under this section, has published requirements for tenants of transitional housing to seek alternative accommodation; and
 - (c) the tenant has—
 - (i) unreasonably refused to seek alternative accommodation in accordance with those requirements; or
 - (ii) refused a reasonable offer of alternative accommodation made in accordance with those requirements.
- (2) The notice must specify a termination date that is not less than 30 days after the date on which the notice is given.
- (3) In this section *transitional housing* means accommodation for a period of more than 14 days and less than 12 months provided to persons in crisis as a result of homelessness or impending homelessness.
- (4) The Director of Housing, by notice published in the Government Gazette, may publish its requirements for tenants of transitional housing to seek alternative accommodation.

263 Notice to vacate for no specified reason

- (1) A landlord may give a tenant a notice to vacate rented premises without specifying a reason for the giving of the notice.

- (2) The notice must specify a termination date that is not less than 120 days after the date on which the notice is given.

S. 263(2)
amended by
No. 45/2002
s. 26(1).

264 Prohibition on letting premises after notice

- (1) A landlord or a person acting on behalf of a landlord who obtains possession of rented premises in respect of which a notice to vacate has been given under sections 256 to 259 must not let the premises to a person for use primarily as a residence before the end of 6 months after the date on which the notice was given.

Penalty: 20 penalty units.

- (2) Subsection (1) does not apply—
- (a) to the letting of the premises to a person referred to in section 258; or
 - (b) if the Tribunal determines that the premises may be let.

265 Effect of excessive rent order on notice to vacate

- (1) A landlord is not entitled to give a notice under section 263 in respect of rented premises if an order is in force under section 47 in respect of those premises.

- (2) If—
- (a) a landlord gives a notice under section 263; and
 - (b) before the termination date specified in the notice, an order in respect of the premises is made under section 47—

the notice is invalid as from the date on which the order is made.

266 Notice to have no effect in certain circumstances

S. 266(1)
amended by
No. 45/2002
s. 26(2)(a).

- (1) A notice given under sections 255, 256, 257, 258, 259, 260, 261, 262 and 263 in respect of a fixed term tenancy agreement is of no effect—
 - (a) if the agreement includes a provision enabling the landlord or the tenant to determine the agreement by notice (otherwise than on the grounds of a breach of the agreement) if—
 - (i) the period after the giving of notice and before the termination date specified in the notice is less than the period of notice required under that provision; or
 - (ii) the termination date specified in the notice is a date other than a date on which under that provision the agreement may be determined; or
 - (b) in any other case, if it specifies a termination date that is earlier than the end of the term of the tenancy agreement.
- (2) A notice under section 261 or section 263 is of no effect if it was given in response to the exercise, or proposed exercise, by the tenant of a right under this Act.
- (3) A person is not entitled to apply to the Tribunal challenging the validity of a notice—
 - (a) in the case of a notice under section 261 relating to a fixed term tenancy agreement for a fixed term of 6 months or more, after the end of 28 days after the date on which the notice is given; or

- (b) in the case of a notice under section 261 relating to a fixed term tenancy agreement for a fixed term of less than 6 months, after the end of 21 days after the date on which the notice is given; or
- (c) in the case of a notice under section 263, after the end of 60 days after the date on which the notice is given.

S. 266(3)(c)
amended by
No. 45/2002
s. 26(2)(b).

267 Notice by owner

- (1) If the landlord under a tenancy agreement is not the owner of the rented premises, the owner may exercise a right of the landlord—
 - (a) to give the tenant a notice to vacate the premises (except under section 254); or
 - (b) to recover possession of the premises; or
 - (c) to give a breach of duty notice under Part 5 that applies to the tenancy agreement.
- (2) A notice to vacate given in accordance with a right conferred by subsection (1) does not have effect unless it specifies a termination date on or after the day on which the landlord's interest in the premises ends.
- (3) If the owner exercises a right conferred by subsection (1) in relation to a tenancy agreement, this Division, Part 5 and Part 7 have effect as if a reference to a landlord under a tenancy agreement included a reference to the owner.

268 Notice by mortgagee

- (1) If a mortgagee in respect of rented premises under a mortgage entered into before the tenancy agreement was entered into becomes entitled to possession of, or to exercise a power of sale in respect of, the premises under a mortgage, the mortgagee may give the tenant a notice to vacate the premises.

- (2) The notice must specify a termination date that is not less than 28 days after the date on which the notice is given.

Division 2—Termination of residency rights in rooming houses

Subdivision 1—When does a residency right end?

269 Termination after notice

A residency right in respect of a room ends if—

- (a) the resident vacates the room after giving a notice of intention to vacate to the rooming house owner; or
- (b) the resident vacates the room after being given a notice to vacate.

270 Termination by Tribunal

A residency right in respect of a room ends on the date fixed in a possession order made by the Tribunal.

271 Termination by abandonment

A residency right ends if the room is abandoned by the resident who has that residency right and at least 14 days have passed since the last rent payment was due.

272 Termination if room or rooming house destroyed

A residency right ends if the resident's room or the rooming house—

- (a) is unfit for human habitation; or
- (b) has been destroyed totally or to such an extent as to be rendered unsafe.

S. 271
amended by
No. 63/2005
s. 26.

273 Offences relating to interference with rights

- (1) Except in accordance with this Act, a person must not—
- (a) require or force or attempt to require or force a resident to vacate his or her room; or
 - (b) take or attempt to take possession of a room in which a resident resides.

Penalty: 20 penalty units.

- (2) Except in accordance with this Act, a person must not, for the purposes of causing a resident to abandon a room—
- (a) interfere with the peace and comfort of a resident; or
 - (b) withdraw any services or facilities reasonably required to allow a resident to reside in the room; or
 - (c) prevent a resident from using any facilities; or
 - (d) do any other act or thing intended or designed to cause the resident to abandon the room.

Penalty: 20 penalty units.

Subdivision 2—Notice or abandonment by resident

274 Notice of intention to vacate room

A resident must give the rooming house owner at least 2 days notice of intention to vacate the room occupied by the resident.

S. 275(1)
substituted by
No. 45/2002
s. 60.

275 Rent payable on termination without notice

- (1) A resident who vacates a room without giving notice must pay to the rooming house owner the rent for the lesser of the following periods—
 - (a) 2 days after vacating the room; or
 - (b) until another resident takes up occupancy of the room.

Penalty: 5 penalty units.

- (2) Subsection (1) does not apply if the rooming house or room has become unsafe or unfit for human habitation.

276 Rent payable if room vacated early

A resident who vacates a room before the day specified in the notice of intention to vacate must pay to the rooming house owner the rent for the period from the day the resident vacated the room until the day specified in the notice.

277 Order of abandonment

- (1) If a rooming house owner believes that a resident has abandoned a room, the owner may apply to the Tribunal for an order declaring that the resident has abandoned the room.
- (2) An application under subsection (1) must be heard by the Tribunal within 5 business days after the application is made.
- (3) On an application under subsection (1), the Tribunal may by order declare that the room was abandoned by the resident on a day specified by the Tribunal.
- (4) The resident is deemed to have abandoned the room on that specified day.

S. 277(2)
amended by
No. 45/2002
s. 80.

Subdivision 3—Notice by rooming house owner or rooming house mortgagee

278 Damage

- (1) A rooming house owner may give a resident a notice to vacate the room occupied by the resident if the resident or the resident's visitor intentionally or recklessly causes or allows serious damage to any part of the rooming house.
- (2) The notice may specify a termination date that is the date on which the notice is given or a later date.

279 Danger

- (1) A rooming house owner may give a resident a notice to vacate the room occupied by the resident if the resident or the resident's visitor by act or omission causes a danger to any person or property in the rooming house.
- (2) The notice may specify a termination date that is the date on which the notice is given or a later date.
- (3) A rooming house owner is not entitled to give a notice to vacate under subsection (1) if a notice to leave under section 368 has been given in respect of that act or omission.

S. 279(3)
substituted by
No. 45/2002
s. 40.

280 Disruption

- (1) A rooming house owner may give a resident a notice to vacate the room occupied by the resident if the resident or the resident's visitor seriously interrupts the quiet and peaceful enjoyment of the rooming house by other residents.
- (2) The notice may specify a termination date that is the date on which the notice is given or a later date.

281 Non-payment of rent

- (1) A rooming house owner may give a resident a notice to vacate the room occupied by the resident if the resident owes at least 7 days rent to the rooming house owner.
- (2) The notice must specify a termination date that is not less than 2 days after the date on which the notice is given.

282 Failure of resident to comply with Tribunal order

- (1) A rooming house owner may give a resident a notice to vacate the room occupied by the resident if the resident fails to comply with an order of the Tribunal under section 212.
- (2) The notice must specify a termination date that is not less than 2 days after the date on which the notice is given.

283 Successive breaches by resident

- (1) A rooming house owner may give a resident a notice to vacate the room occupied by the resident if—
 - (a) the resident has breached a duty provision within the meaning of Part 5; and
 - (b) on 2 previous occasions the resident has been in breach of the same provision; and
 - (c) the rooming house owner or the rooming house owner's agent has on each occasion given a breach of duty notice to the resident under section 208.

S. 283(1)(c)
amended by
No. 45/2002
s. 89(3)(a).

S. 283(1)(d)
repealed by
No. 45/2002
s. 89(3)(b).

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

284 Use of room for illegal purpose

- (1) A rooming house owner may give a resident a notice to vacate the room (other than a shared room) occupied by the resident if the resident has used the room or permitted its use for any purpose that is illegal at common law or under an Act.

S. 284(1)
amended by
No. 63/2005
s. 27(1).

- (1A) A rooming house owner may give a resident of a shared room a notice to vacate that room if the resident has used the room or permitted his or her visitors to use the room for any purpose that is illegal at common law or under an Act.

S. 284(1A)
inserted by
No. 63/2005
s. 27(2).

- (2) A notice under this section must specify a termination date that is not less than 2 days after the date on which the notice is given.

S. 284(2)
amended by
No. 63/2005
s. 27(3).

285 Sale of rooming house

- (1) A rooming house owner may give a resident a notice to vacate the room occupied by the resident if immediately after the termination date the rooming house is to be sold or offered for sale with vacant possession.

- (1A) If a rooming house owner has entered into a contract of sale of the rooming house and the contract of sale is subject to one or more conditions which, if not satisfied, entitle a party to the contract to terminate the contract, the rooming house owner may, within 14 days after the last of those conditions is satisfied, give a resident a notice to vacate the room occupied by the resident.

S. 285(1A)
inserted by
No. 45/2002
s. 41(1).

s. 286

S. 285(1B)
inserted by
No. 45/2002
s. 41(1).

(1B) If a rooming house owner has entered into a contract of sale of the rooming house which is not a contract of sale of the kind referred to in subsection (1A), the rooming house owner may, within 14 days after the contract of sale is entered into, give a resident a notice to vacate the room occupied by the resident.

S. 285(2)
amended by
No. 45/2002
s. 41(2).

(2) A notice under this section must specify a termination date that is not less than 60 days after the date on which the notice is given.

286 Repairs or demolition

(1) A rooming house owner may give a resident a notice to vacate the room occupied by the resident if—

(a) the rooming house owner intends to repair, renovate, reconstruct or demolish the rooming house immediately after the termination date; and

(b) the rooming house owner has obtained all necessary permits and consents to carry out the work; and

(c) the work cannot be properly carried out unless the resident vacates the rooming house.

(2) The notice must specify a termination date that is not less than 60 days after the date on which the notice is given.

(3) If—

(a) the proposed repairs, renovations or reconstruction will affect a resident's room but will not affect all the rooms in a rooming house; and

- (b) a room equivalent to the resident's room at an equivalent rent is available for rent in the rooming house—

the rooming house owner must not give the notice under subsection (1) unless the rooming house owner has first offered the equivalent room to the resident and the resident has refused to occupy that room in place of the resident's current room.

287 Prohibition on renting after notice

- (1) A rooming house owner must not rent a room vacated after a notice under section 286 for 6 months after the room is vacated.

Penalty: 20 penalty units.

- (2) Subsection (1) does not apply if—
- (a) the Tribunal determines that the room may be rented; or
 - (b) the repairs, renovations or reconstruction have been completed.

287A Resident in transitional housing refuses alternative accommodation

S. 287A
inserted by
No. 45/2002
s. 42.

- (1) A rooming house owner which is the Director of Housing or a delegate of the Director of Housing may give a resident a notice to vacate a room occupied by the resident if—
- (a) the room was provided as transitional housing; and
 - (b) the Director of Housing, under this section, has published requirements for residents of transitional housing to seek alternative accommodation; and

- (c) the resident has—
- (i) unreasonably refused to seek alternative accommodation in accordance with those requirements; or
 - (ii) refused a reasonable offer of alternative accommodation made in accordance with those requirements.
- (2) The notice must specify a termination date that is not less than 30 days after the date on which the notice is given.
- (3) In this section, *transitional housing* means accommodation for a period of more than 14 days and less than 12 months provided to persons in crisis as a result of homelessness or impending homelessness.
- (4) The Director of Housing, by notice published in the Government Gazette, may publish its requirements for residents of transitional housing to seek alternative accommodation.

288 Notice for no specified reason

- (1) A rooming house owner may give a resident a notice to vacate the room occupied by the resident without specifying a reason for giving the notice.
- (2) The notice must specify a termination date that is not less than 120 days after the date on which the notice is given.

S. 288(2)
amended by
No. 45/2002
s. 43(1).

289 Notice of no effect

- (1) A notice under section 288 is of no effect if it was given in response to the exercise, or proposed exercise, by the resident of a right under this Act.
- (2) A person is not entitled to apply to the Tribunal challenging the validity of a notice under subsection (1) after the end of 60 days after the date on which the notice is given.

S. 289(2)
amended by
No. 45/2002
s. 43(2).

290 Notice by rooming house mortgagee

- (1) A rooming house mortgagee may give a resident a notice to vacate a room if the rooming house mortgagee becomes entitled to possession of, or to exercise a power of sale in respect of, the rooming house under a mortgage.
- (2) The notice must specify a termination date that is not less than 28 days after the date on which the notice is given.

Division 3—Termination of residency rights in caravan parks

Subdivision 1—When does a residency right end?

291 Termination after notice

A residency right in respect of a site or caravan in a caravan park ends if—

- (a) the resident vacates the site or caravan after giving a notice of intention to vacate to the caravan park owner or caravan owner; or
- (b) the resident vacates the site or caravan after being given a notice to vacate.

292 Termination by agreement

A residency right in respect of a site or caravan in a caravan park may be ended by agreement between the resident and the caravan park owner or caravan owner.

293 Termination on execution of warrant

If the Tribunal makes a possession order in respect of a caravan or site, a residency right ends on the day that the warrant of possession is executed.

294 Termination by abandonment

A residency right ends if the resident abandons the site or caravan.

295 Offences relating to interference with rights

Except in accordance with this Act, a person must not—

- (a) require or force a resident to vacate a site or a caravan; or
- (b) take or attempt to take possession of a site by removing the caravan in which the resident resides; or
- (c) exclude or attempt to exclude from or restrict or attempt to restrict access to the site or the caravan or the caravan park in which either is situated; or
- (d) take or attempt to take possession of the caravan in which a resident resides; or
- (e) interfere with the peace and comfort of a resident for the purposes of causing the resident to abandon the site or the caravan;
or
- (f) withdraw or restrict services or facilities which are reasonably required for the occupation of a site or a caravan as a residence for the purposes of causing the resident to abandon the site or caravan.

Penalty: 20 penalty units.

Subdivision 2—Notice or abandonment by resident

296 Notice of intention to vacate site or caravan

- (1) A resident must give the caravan park owner at least 7 days notice of intention to vacate the site occupied by the resident.
- (2) A resident who hires a caravan from a caravan owner must give the caravan owner at least 7 days notice of intention to vacate the caravan.

297 Notice if caravan destroyed or unfit for habitation

- (1) A resident may give a notice of intention to vacate a caravan if the caravan—
 - (a) is unfit for human habitation; or
 - (b) has been destroyed totally or to such an extent as to be rendered unsafe.
- (2) The notice may specify a termination date that is the date on which the notice is given or a later date.
- (3) The notice under subsection (1) must be given to—
 - (a) the caravan owner or the caravan owner's agent; and
 - (b) the caravan park owner or the caravan park owner's agent.

298 Rent or hiring charge payable on termination without notice

- (1) A resident who vacates a site without giving notice must pay to the caravan park owner the rent for the lesser of the following periods—
 - (a) 7 days after vacating the site; or
 - (b) until another resident takes up occupancy of the site.

Penalty: 5 penalty units.

S. 298
substituted by
No. 45/2002
s. 61.

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- (2) A resident who vacates a caravan without giving notice must pay to the caravan owner the hiring charge for the lesser of the following periods—
- (a) 7 days after vacating the caravan; or
 - (b) until another resident takes up occupancy of the caravan.

Penalty: 5 penalty units.

299 Rent or hiring charge payable if site or caravan vacated early

- (1) A resident who vacates a site before the day specified in the notice of intention to vacate the site must pay to the caravan park owner the rent for the period from the day the resident vacated the site until the day specified in the notice.
- (2) A resident who vacates a caravan before the day specified in the notice of intention to vacate the caravan must pay to the caravan owner the hiring charge for the period from the day the resident vacated the caravan until the day specified in the notice.

300 Abandonment of site or caravan

- (1) A resident abandons a site or caravan if the resident leaves it without any intention of returning and—
- (a) without first giving notice of intention to vacate to the caravan park owner or the caravan owner; or
 - (b) without first obtaining the agreement of the caravan park owner or the caravan owner.

S. 300(1)
substituted by
No. 45/2002
s. 54.

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- (2) A resident may be regarded as having no intention of returning if—
- (a) the resident has not occupied the site or caravan for a period of at least 14 days and has not paid any rent or hiring charges for that period; or
 - (b) the resident has left the site or caravan and in all the circumstances it would be unreasonable to expect him or her to return.

301 Order of abandonment

- (1) If a caravan park owner or caravan owner believes that a resident has abandoned a site or caravan, the caravan park owner or caravan owner may apply to the Tribunal for an order declaring that the resident has abandoned the site or caravan.
- (2) An application under subsection (1) must be heard by the Tribunal within 5 business days after the application is made.
- (3) On an application under subsection (1), the Tribunal may by order declare that the site or caravan was abandoned by the resident on a day specified by the Tribunal.
- (4) The resident is deemed to have abandoned the caravan or site on that specified day.
- (5) The caravan park owner may also apply to the Tribunal for an order—
 - (a) requiring the caravan mortgagee to pay rent until the caravan is removed from the site; and
 - (b) fixing the amount of that rent.
- (6) The rent is payable by the caravan mortgagee from the seventh day after the caravan park owner gives notice in writing to the caravan mortgagee of the orders under subsections (3) and (5).

S. 301(2)
amended by
No. 45/2002
s. 80.

Subdivision 3—Notice by caravan park owner, caravan owner or caravan mortgagee

302 Damage

- (1) A caravan park owner may give a resident a notice to vacate a site if the resident or the resident's visitor intentionally or recklessly causes or allows serious damage to the site or the caravan park or any facility in the caravan park.
- (2) A caravan owner may give a resident a notice to vacate a caravan if the resident or a resident's visitor intentionally or recklessly causes or allows serious damage to a caravan hired from the caravan owner.
- (3) The notice may require the resident to vacate the site or caravan immediately.

303 Danger

- (1) A caravan park owner may give a resident a notice to vacate a site if the resident or the resident's visitor by act or omission causes a danger to any person or property in the caravan park.
- (2) The notice may require the resident to vacate the site immediately.
- (3) A caravan park owner is not entitled to give a notice to vacate under subsection (1) if a notice to leave under section 368 has been given in respect of that act or omission.

S. 303(3)
substituted by
No. 45/2002
s. 55.

304 Disruption

- (1) A caravan park owner may give a resident a notice to vacate a site if the resident or the resident's visitor seriously interrupts the quiet and peaceful enjoyment of the caravan park by other occupiers.
- (2) The notice may require the resident to vacate the site immediately.

305 Non-payment of rent

- (1) A caravan park owner may give a resident a notice to vacate a site if the resident owes at least 7 days rent to the caravan park owner.
- (2) The notice must specify a termination date that is not less than 7 days after the date on which the notice is given.

306 Non-payment of hiring charges

- (1) A caravan owner may give a resident a notice to vacate a caravan if the resident owes at least 7 days hiring charges to the caravan owner.
- (2) The notice must specify a termination date that is not less than 7 days after the date on which the notice is given.

307 Failure of resident to comply with Tribunal order

- (1) A caravan park owner or caravan owner may give a resident a notice to vacate a site or caravan if the resident fails to comply with an order of the Tribunal under section 212.
- (2) The notice must specify a termination date that is not less than 7 days after the date on which the notice is given.

308 Successive breaches by resident

- (1) A caravan park owner or caravan owner may give a resident a notice to vacate a site or caravan if—
 - (a) the resident has breached a duty provision within the meaning of Part 5; and
 - (b) on 2 previous occasions the resident has been in breach of the same provision; and
 - (c) the caravan park owner or caravan owner or that person's agent has on each occasion given a breach of duty notice to the resident under section 208.

S. 308(1)(c)
amended by
No. 45/2002
s. 89(4)(a).

s. 309

S. 308(1)(d)
repealed by
No. 45/2002
s. 89(4)(b).

* * * * *

- (2) The notice must specify a termination date that is not less than 7 days after the date on which the notice is given.

309 Use of site or caravan for illegal purpose

- (1) A caravan park owner or caravan owner may give a resident a notice to vacate a site or caravan if the resident has used the site or caravan or permitted its use for any purpose that is illegal at common law or under an Act.
- (2) The notice must specify a termination date that is not less than 7 days after the date on which the notice is given.

310 Sale of caravan

S. 310(1A)
inserted by
No. 45/2002
s. 56(1).

- (1) A caravan park owner may give a resident a notice to vacate a site if immediately after the termination date a caravan owned by the caravan park owner and occupied by the resident is to be sold.
- (1A) If a caravan park owner has entered into a contract of sale of a caravan owned by the caravan park owner and the contract of sale is subject to one or more conditions which, if not satisfied, entitle a party to the contract to terminate the contract, the caravan park owner may, within 14 days after the last of those conditions is satisfied, give a resident a notice to vacate the caravan occupied by the resident.

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- (1B) If a caravan park owner has entered into a contract of sale of a caravan owned by the caravan park owner which is not a contract of sale of the kind referred to in subsection (1A), the caravan park owner may, within 14 days after the contract of sale is entered into, give a resident a notice to vacate the caravan occupied by the resident. **S. 310(1B) inserted by No. 45/2002 s. 56(1).**
- (2) A caravan owner may give a resident a notice to vacate a caravan if immediately after the termination date a caravan owned by the caravan owner and occupied by the resident is to be sold.
- (2A) If a caravan owner has entered into a contract of sale of a caravan owned by the caravan owner and the contract of sale is subject to one or more conditions which, if not satisfied, entitle a party to the contract to terminate the contract, the caravan owner may, within 14 days after the last of those conditions is satisfied, give a resident a notice to vacate the caravan occupied by the resident. **S. 310(2A) inserted by No. 45/2002 s. 56(2).**
- (2B) If a caravan owner has entered into a contract of sale of a caravan owned by the caravan owner which is not a contract of sale of the kind referred to in subsection (2A), the caravan owner may, within 14 days after the contract of sale is entered into, give a resident a notice to vacate the caravan occupied by the resident. **S. 310(2B) inserted by No. 45/2002 s. 56(2).**
- (3) A notice under this section must specify a termination date that is not less than 60 days after the date on which the notice is given. **S. 310(3) amended by No. 45/2002 s. 56(3)(a).**
- (4) If an agreement under section 144 specifies a day on which the term of occupancy is to end, a notice under this section cannot specify a termination date that is earlier than the day on which the occupancy is to end. **S. 310(4) amended by No. 45/2002 s. 56(3)(b).**
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311 Change of use

- (1) A caravan park owner may give a resident a notice to vacate a site if the caravan park is to be converted to a use other than a caravan park.
- (2) The notice must specify a termination date that is not less than 6 months after the date on which the notice is given.
- (3) If an agreement under section 144 specifies a day on which the term of occupancy is to end, the notice cannot specify a termination date that is earlier than the day on which the occupancy is to end.

312 Occupation by caravan owner

- (1) This section applies if a resident has hired a caravan for a fixed term.
- (2) A caravan owner may give a resident a notice to vacate a caravan if—
 - (a) the caravan owner intends to occupy the caravan himself or herself; or
 - (b) the caravan owner intends to make it available for occupation by—
 - (i) his or her partner, son, daughter, parent or partner's parent; or
 - (ii) another person who normally lives with the caravan owner and is wholly or substantially dependent on the caravan owner.
- (3) The notice must specify a termination date that is not less than 14 days after the end of the fixed term.

S. 312(2)(b)(i)
amended by
No. 27/2001
s. 3(Sch. 1
item 10.3(a)
(b)).

313 Prohibition on hiring of caravans or renting of sites after notice

- (1) A caravan park owner must not rent a site vacated under section 310 or 311 for 6 months after the site is vacated.

Penalty: 20 penalty units.

- (2) A caravan owner must not hire out a caravan vacated under section 310 or 312 for 6 months after the caravan is vacated.

Penalty: 20 penalty units.

- (3) Subsection (1) does not apply if the Tribunal determines that the site may be rented.

- (4) Subsection (2) does not apply if—

- (a) the Tribunal determines that the caravan may be hired out; or
- (b) the caravan is vacated under section 312 and the caravan is hired out to a person referred to in that section.

314 Notice for no specified reason

- (1) A caravan park owner may give a resident a notice to vacate a site without specifying a reason for the giving of the notice.

- (2) A caravan owner may give a resident a notice to vacate a caravan without specifying a reason for the giving of the notice.

- (3) The notice must specify a termination date that is not less than 120 days after the date on which the notice is given.

S. 314(3)
amended by
No. 45/2002
s. 57(1).

- (4) The notice must not specify a termination date that is earlier than—

- (a) the day specified in an agreement under section 144 as the day on which the term of occupancy is to end; or

- (b) the day specified in an agreement under section 144 as the day on which the term of occupancy may be ended by a notice under this section; or
 - (c) the end of the period of notice required by an agreement under section 144 for a notice under this section.
- (5) Subsection (1) does not apply if the caravan park is to be converted to a use other than a caravan park.

315 Notice of no effect

- (1) A notice under section 314 is of no effect if it was given in response to the exercise, or proposed exercise, by the resident of a right under this Act.
- (2) A person is not entitled to apply to the Tribunal challenging the validity of a notice under this section after the end of 60 days after the date on which the notice is given.

S. 315(2)
amended by
No. 45/2002
s. 57(2).

316 Notice by caravan park mortgagee

- (1) A caravan park mortgagee may give a resident a notice to vacate a site if the caravan park mortgagee becomes entitled to possession of, or to exercise a power of sale in respect of, the caravan park under a mortgage.
- (2) The notice must specify a termination date that is—
 - (a) not less than 90 days after the date on which the notice is given if the mortgage was given before the resident obtained a residency right; or
 - (b) not less than 6 months after the date on which the notice is given if the mortgage was given after the resident obtained a residency right.

317 Notice by caravan mortgagee

- (1) A caravan mortgagee may give a resident who is not the caravan mortgagor a notice to vacate a caravan if the caravan mortgagee becomes entitled to possession of the caravan under a security.
- (2) The notice must specify a termination date that is—
 - (a) not less than 30 days after the date on which the notice is given if the security was given before the resident obtained a residency right; or
 - (b) not less than 6 months after the date on which the notice is given if the mortgage was given after the resident obtained a residency right.
- (3) If a caravan mortgagee becomes entitled to possession of a caravan under a security given by a resident who is the caravan mortgagor, the caravan mortgagee may exercise the rights given under the security.

Division 4—Notices under this Part

318 Form of notice of intention to vacate

- (1) A notice of intention to vacate rented premises or a caravan or site in a caravan park is not valid unless it is in writing.
- (2) A notice of intention to vacate a room in a rooming house may be given orally or, if so required by the rooming house owner, in writing.
- (3) A notice of intention to vacate given under this Part which is in writing is not valid unless it is signed by the person giving the notice or by that person's agent.

319 Form of notice to vacate

A notice to vacate given under this Part is not valid unless—

S. 319(a)
amended by
No. 45/2002
s. 62(a).

(a) it is in the relevant prescribed form; and

(b) it is addressed to the tenant or resident; and

(c) it is signed by the person giving the notice or by that person's agent; and

S. 319(d)
amended by
No. 45/2002
s. 62(b).

(d) except in the case of a notice under section 263, 288 or 314, it specifies the reason or reasons for giving the notice; and

(e) it specifies the date by which compliance is required (the *termination date*).

S. 319A
inserted by
No. 45/2002
s. 63.

319A Composite notices to vacate

If a person is or becomes entitled to give 2 or more notices to vacate under section 255, 256, 257, 258, 259, 260, 285 or 286—

(a) the person may give one composite notice to vacate in accordance with section 319; and

(b) that notice is to be taken to be a notice to vacate under each of the sections referred to in the notice.

320 What if 2 or more notices can be served?

If a person is or becomes entitled to give 2 or more notices of intention to vacate or notices to vacate under this Part—

(a) the invalidity of any of the notices does not affect the validity of any other notice; and

(b) each valid notice has full force and effect.

321 How can a notice be withdrawn?

- (1) Subject to subsections (2) and (3), a notice of intention to vacate or a notice to vacate given under this Part is withdrawn only if a notice of withdrawal is given.
- (2) Subject to subsection (3), a notice of withdrawal must be—
 - (a) in writing; and
 - (b) signed by the person who gave the notice; and
 - (c) signed by the person to whom the notice was given.
- (3) If a notice of intention to vacate a room is given orally, it may be withdrawn orally.

Division 5—Can a notice to vacate be challenged?

Pt 6 Div. 5
(Heading and
ss 321A–
321C)
inserted by
No. 45/2002
s. 64.

321A Application of Division

Nothing in this Division affects any right a tenant or resident may have to challenge the validity of any other notice to vacate under this Act.

S. 321A
inserted by
No. 45/2002
s. 64.

321B Tenant or resident may apply to Tribunal

- (1) On or before the hearing of an application for a possession order in respect of a notice to vacate given under section 255, 256, 257, 258, 259, 260, 285, 286 or 310, a tenant or resident who has received the notice to vacate may apply to the Tribunal challenging the validity of the notice to vacate.
- (2) An application under subsection (1) must be made within 30 days after the notice to vacate is given.

S. 321B
inserted by
No. 45/2002
s. 64.

s. 321C

S. 321C
inserted by
No. 45/2002
s. 64.

321C What can the Tribunal order?

- (1) The Tribunal may consider an application under section 321B and may determine whether or not the notice to vacate is valid.
 - (2) If the Tribunal determines that the notice to vacate is valid, the tenant or resident is not entitled to bring any further application to the Tribunal to challenge the validity of the notice to vacate unless the Tribunal is satisfied that exceptional circumstances exist which justify reconsideration of the determination made under this section.
 - (3) Nothing in subsection (2) affects the operation of section 479.
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**PART 7—REGAINING POSSESSION—POSSESSION
ORDERS AND WARRANTS**

Division 1—Applications for possession orders

322 Application for possession order by landlord

- (1) A landlord may apply to the Tribunal for a possession order for rented premises if the landlord has given the tenant a notice to vacate the premises (other than a notice under section 261 or section 263).
- (2) A landlord may apply to the Tribunal for a possession order for rented premises if—
 - (a) the landlord has given the tenant a notice to vacate the premises under section 261 or section 263; and
 - (b) the tenant has not delivered up vacant possession of the premises.
- (3) A landlord may apply to the Tribunal for a possession order for rented premises if—
 - (a) the tenant has given the landlord a notice of intention to vacate the premises; and
 - (b) the tenant has not delivered up vacant possession of the premises.

323 Application for possession order by rooming house owner

A rooming house owner may apply to the Tribunal for a possession order for a room if—

- (a) the rooming house owner has given the resident a notice to vacate the room; or
- (b) the resident has given the rooming house owner a notice of intention to vacate the room.

324 Application for possession order by caravan park owner or caravan owner

- (1) A caravan park owner may apply to the Tribunal for a possession order for a site if the caravan park owner has given the resident a notice to vacate the site.
- (2) A caravan owner may apply to the Tribunal for a possession order for a caravan if the caravan owner has given a resident a notice to vacate the caravan.
- (3) A caravan park owner or caravan owner may apply to the Tribunal for a possession order if the resident has given the owner a notice of intention to vacate the site or caravan.

325 Application for possession order by mortgagee

- (1) A mortgagee of rented premises may apply to the Tribunal for a possession order for rented premises if—
 - (a) the mortgagee has given the tenant a notice to vacate the premises; and
 - (b) the tenant has not delivered up vacant possession of the premises.
- (2) A rooming house mortgagee may apply to the Tribunal for a possession order if—
 - (a) the rooming house mortgagee has given a resident a notice to vacate a room; and
 - (b) the resident fails to vacate the room by the date specified in the notice.

- (3) A caravan park mortgagee or caravan mortgagee may apply to the Tribunal for a possession order if—
- (a) the mortgagee has given a resident a notice to vacate the site or caravan; and
 - (b) the resident fails to vacate the site or caravan by the date specified in the notice.

326 Time for application

- (1) An application under section 322(1), 323(a), 324(1) or 324(2) may be made at any time after the notice to vacate is given but not later than 30 days after the termination date specified in the notice.
- (2) An application under section 322(2), 322(3) or 325 must be made after the termination date specified in the notice to vacate but not later than 30 days after that date.
- (3) An application under section 323(b) or 324(3) must be made after the end of 7 days after the date on which the notice of intention to vacate is given but not later than 30 days after the termination date specified in the notice.

327 Applications where composite notice to vacate is given

If a composite notice to vacate as provided for in section 319A has been given to a tenant or resident, a composite application may be made under section 322(1), 323(a) or 324(1) or (2) (as the case requires) in respect of each of the notices to vacate included in the composite notice to vacate.

S. 327
repealed by
No. 52/1998
s. 236(l),
new s. 327
inserted by
No. 45/2002
s. 65.

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S. 328
repealed by
No. 52/1998
s. 236(l).

329 Hearing of application for possession order

The Tribunal must not determine an application for a possession order under this Division earlier than the termination date specified in the notice to vacate or notice of intention to vacate accompanying the application.

330 Order of Tribunal

- (1) The Tribunal must make a possession order requiring a tenant or resident to vacate rented premises, a room and rooming house, a site or a caravan on the day specified in the order if the Tribunal is satisfied—
 - (a) in the case of an application where notice to vacate has been given, that—
 - (i) the landlord, rooming house owner, caravan park owner, caravan owner or mortgagee was entitled to give the notice; and
 - (ii) the notice has not been withdrawn; and
 - (b) in the case of an application where a notice of intention to vacate has been given by a tenant or resident, that the landlord, rooming house owner, caravan park owner or caravan owner acted reasonably by relying on the notice of intention to vacate; and
 - (c) that the landlord, rooming house owner, caravan park owner, caravan owner or mortgagee has complied with section 72 of the **Victorian Civil and Administrative Tribunal Act 1998**; and
 - (d) that the tenant or resident is still in possession of the rented premises, room, site or caravan after the termination date specified in the notice to vacate or notice of intention to vacate.

S. 330(1)(c)
amended by
No. 101/1998
s. 32.

- (2) If an application for a possession order is made under section 322(3), 323(b) or 324(3)—
- (a) the application must be heard within 14 days after the application is made; and
 - (b) the possession order must be made within 7 days of that hearing.

S. 330(2)
substituted by
No. 45/2002
s. 81.

331 Order to be dismissed or adjourned in certain circumstances

- (1) The Tribunal may dismiss or adjourn an application for a possession order if—
- (a) the application is supported with—
 - (i) in the case of rented premises, a notice to vacate given under section 246; or
 - (ii) in the case of a rooming house, a notice to vacate given under section 281; or
 - (iii) in the case of a caravan or site, a notice to vacate given under section 305 or 306; and
 - (b) the Tribunal considers that satisfactory arrangements have been or can be made to avoid financial loss to the landlord, rooming house owner, caravan park owner or caravan owner (as the case may be).
- (2) An adjournment may be on any terms the Tribunal thinks fit.
- (3) On the resumption of an adjourned hearing, the Tribunal—
- (a) may make a possession order if the tenant has continued to accrue arrears of rent during the adjournment period; and

S. 331(3)
substituted by
No. 45/2002
s. 82.

- (b) must dismiss the application if the tenant—
 - (i) has paid all the arrears which were the subject of the original application; and
 - (ii) has accrued no further arrears of rent from the time of the application to the date of resumption of the adjourned hearing.

332 Order not to be made in certain circumstances

- (1) Despite section 330, the Tribunal must not make a possession order if—
 - (a) the application for the order is supported with a notice to vacate given under section 248, 282 or 307; and
 - (b) the Tribunal is satisfied that—
 - (i) the failure to comply with an order of the Tribunal was trivial or has been remedied as far as possible; and
 - (ii) there will not be any further breach of the duty; and
 - (iii) the breach of duty is not a recurrence of a previous breach of duty.
- (2) Despite section 330, the Tribunal must not make a possession order if—
 - (a) the application for the order is supported by a notice to vacate given under section 280 or 304; and
 - (b) the Tribunal is satisfied that—
 - (i) the interruption to quiet and peaceful enjoyment of the rooming house or the caravan park (as the case may be) has ceased; and
 - (ii) the disturbance is not a recurrence and will not be repeated.

333 Contents of possession order

- (1) A possession order must include—
- (a) the day (being a day not more than 30 days after the day on which the possession order is made) by which—
 - (i) in the case of rented premises, the tenant must vacate those rented premises; and
 - (ii) in the case of a room in a rooming house, the resident must vacate the room and rooming house; and
 - (iii) in the case of a site or caravan, the resident must vacate the site or caravan; and
 - (b) a direction to the tenant or resident (as the case may be) to vacate the rented premises, room and rooming house, site or caravan by the day specified in the order; and
 - (c) a direction to the principal registrar to issue a warrant of possession in accordance with section 351 on the application of the person who obtained the possession order.
- (2) A possession order for rented premises or a room in a rooming house must also include a warning that if the tenant or resident fails to comply with the direction in subsection (1)(b), he or she may be forcibly vacated from the rented premises or room and rooming house by a member of the police force or an authorised person carrying out a warrant of possession.
- (3) A possession order for a site or caravan must also include a warning that if the resident and any other person residing at the site or in the caravan fails to comply with the direction referred to in subsection (1)(b)—

S. 333(1)(c)
amended by
No. 45/2002
s. 96(a).

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- (a) if the resident had a right to reside in a caravan owned by a caravan owner, he or she and any other person residing at the site or in the caravan may be forcibly vacated from the site and the caravan park by a member of the police force or an authorised person carrying out a warrant of possession; or
 - (b) if the resident had a right to occupy a site in a caravan owned by the resident, he or she and any other person residing at the site or in the caravan may be forcibly vacated from the site and the caravan park by a member of the police force or an authorised person carrying out a warrant of possession and the caravan may be removed from the caravan park and held under Division 5.

334 Effect of possession order for rented premises

If a possession order is made under this Division in respect of rented premises, the tenancy agreement terminates at the end of the day before the day on which possession of the rented premises is delivered up to the landlord or mortgagee.

Division 2—Alternative procedure for possession

335 Application for possession order where rent owing

A landlord may apply to the Tribunal for a possession order for rented premises if the tenant owes at least 14 days rent to the landlord.

336 Landlord to give tenant notice to vacate

- (1) On making an application under section 335, the landlord must give to the tenant personally or by registered post a notice to vacate the rented premises.

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- (2) The notice must specify a termination date that is not less than 14 days after the date on which the notice is given.
 - (3) The notice to vacate must be accompanied by—
 - (a) a copy of the landlord's application under section 335; and
 - (b) 2 notice of objection forms in the prescribed form; and
 - (c) a statement in the prescribed form setting out in summary form the tenant's rights under this Division.

337 Landlord may apply for possession order in respect of notice under section 261

- (1) If a landlord has given a notice to vacate under section 261, the landlord may give the tenant a further notice informing the tenant that the landlord intends to apply to the Tribunal under this section for a possession order if the tenant does not deliver up vacant possession of the rented premises by the end of the termination date set out in the notice to vacate.
- (2) A notice must be given to the tenant under subsection (1)—
 - (a) in the case of a fixed term tenancy agreement for a term of 6 months or more, not less than 14 days and not more than 21 days before the termination date specified in the notice to vacate; and
 - (b) in the case of a fixed term tenancy agreement for a term of less than 6 months, not less than 7 days and not more than 14 days before the termination date specified in the notice to vacate.

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- (3) A landlord may apply to the Tribunal for a possession order if—
- (a) the landlord has given the tenant a notice to vacate under section 261 and a notice in accordance with subsections (1) and (2); and
 - (b) the tenant has not delivered up vacant possession of the rented premises by the end of the termination date specified in the notice to vacate.
- (4) The landlord must give a copy of the application under subsection (3) to the tenant accompanied by—
- (a) 2 notice of objection forms in the prescribed form; and
 - (b) a statement in the prescribed form setting out in summary form the tenant's rights under this Division.

338 Objection by tenant

- (1) If a tenant wishes to object to the making of a possession order under this Division, the tenant must—
- (a) lodge a notice of objection in the prescribed form with the Tribunal in the prescribed manner; and
 - (b) serve a notice of objection in the prescribed form on the landlord.
- (2) A tenant who lodges a notice of objection under subsection (1) must lodge it—
- (a) in the case of a notice of objection in relation to an application under section 335, before 4 p.m. on the termination date; or

- (b) in the case of a notice of objection in relation to a notice to vacate given under section 261, before the end of 4 business days after the date on which the tenant received the copy of the application under section 337.
- (3) On the lodging of the notice of objection, Division 1 applies—
- (a) in relation to an application under section 335, as if the application for the possession order were made under section 322 after giving a notice to vacate under section 246; and
- (b) in relation to an application under section 337, as if the application for the possession order were made under section 322.

339 Request for determination if no notice of objection

- (1) If the tenant does not lodge a notice of objection with the Tribunal within the period specified under section 338, the landlord may lodge a request for determination with the Tribunal.
- (2) A request for determination must be made within 28 days after the termination date set out in the notice to vacate.
- (3) If the request for determination is not made within the required period the application for the possession order is deemed to be withdrawn.

S. 339(1)
amended by
No. 52/1998
s. 236(m).

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S. 340
repealed by
No. 52/1998
s. 236(n).

341 Principal registrar to make determination if no notice of objection

S. 341(1)
amended by
No. 52/1998
s. 236(o).

- (1) If a request for determination is made under section 339 in relation to an application under section 335 and the principal registrar is satisfied that the determination should be made, the principal registrar must—
 - (a) make a possession order directing the tenant to vacate the rented premises immediately or if a later day is specified by the landlord, that later day; and
 - (b) make a determination of the amount of rent owing to the landlord by the tenant at the date of the landlord's affidavit; and
 - (c) make a determination directing the Authority to pay out an amount of bond to or on account of the landlord in respect of the rent owing.

S. 341(2)
amended by
No. 52/1998
s. 236(o).

- (2) If a request for determination is made under section 339 in relation to a notice to vacate given under section 261 and the principal registrar is satisfied that the determination should be made, the principal registrar—
 - (a) must make a possession order directing the tenant to vacate the rented premises immediately or if a later day is specified by the landlord, that later day; and
 - (b) may make a determination of the amount of rent owing to the landlord by the tenant (if any) at the date of the landlord's affidavit; and
 - (c) may make a determination directing the Authority to pay out an amount of bond to or on account of the landlord in respect of the rent owing (if any).

- (3) A possession order under this section must provide that—
- (a) a warrant of possession must be issued on the application of the landlord; and
 - (b) an application to the principal registrar for the issue of a warrant of possession must be made not more than 30 days after the day on which the order is made; and
 - (c) the warrant of possession must be executed not more than 30 days after the day on which the warrant is issued.
- (4) A possession order under this section must include a warning that if the tenant fails to comply with a direction under subsection (1)(a) or subsection (2)(a), he or she may be forcibly vacated from the rented premises by a member of the police force or an authorised person carrying out a warrant of possession.
- (5) An order or determination of the principal registrar under this section is deemed to be an order or determination of the Tribunal

S. 341(3)(b)
amended by
No. 52/1998
s. 236(o).

S. 341(5)
amended by
No. 52/1998
s. 236(o).

342 Effect of possession order

If a possession order is made under this Division, the tenancy agreement terminates at the end of the day before the day on which possession of the rented premises is delivered up to the landlord.

343 What if the principal registrar is not satisfied that determination should be made?

- (1) If the principal registrar is not satisfied that the determination should be made, the principal registrar may, or if the applicant so requests, must, refer the matter to the Tribunal for determination.

S. 343(1)
amended by
No. 52/1998
s. 236(o).

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- (2) Division 1 applies to a request for determination referred to the Tribunal under subsection (1)—
- (a) in relation to an application under section 335, as if the request for determination were an application for a possession order made under section 322 after giving a notice to vacate under section 246; and
 - (b) in relation to an application under section 337, as if the request for determination were an application for a possession order made under section 322.

Division 3—Recovery of possession of rented premises where occupied without consent

344 Application for possession order if premises occupied without consent

- (1) A person who claims to be entitled to the possession of premises may apply to the Tribunal for a possession order if—
- (a) the premises have been rented premises under a tenancy agreement at any time within the period of 12 months before the date of the application; and
 - (b) the applicant alleges that the premises are occupied solely by a person (not being a tenant under a tenancy agreement) who entered into or remained in occupation without the applicant's licence or consent or that of any predecessor in title of the applicant.

S. 344(2)
repealed by
No. 52/1998
s. 236(p).

* * * * *

345 Order of Tribunal

The Tribunal must make a possession order for the premises if the Tribunal is satisfied that—

- (a) the applicant under section 344 is entitled to possession of the premises; and
- (b) there are reasonable grounds for believing that a person is occupying the premises without licence or consent.

346 What must the possession order provide?

A possession order under this Division must—

- (a) direct the principal registrar to issue without delay a warrant of possession against all persons for the time being occupying the premises; or
- (b) provide that notice in the form prescribed by the rules of the Tribunal be served without delay on all persons for the time being occupying the premises requiring them—
 - (i) to appear before the Tribunal on a day after the end of 7 days after the giving of the notice; and
 - (ii) to show cause why a warrant of possession should not be issued.

S. 346(a)
amended by
No. 52/1998
s. 236(q).

S. 346(b)
amended by
No. 52/1998
s. 236(r).

347 Notice to occupiers of premises

If a possession order under this Division requires a notice to be given, the applicant for the order must serve a copy of the order and the notice on all persons for the time being occupying the premises by affixing the copy of the order and the notice to a door giving access to the premises.

S. 348(1)
amended by
No. 52/1998
s. 236(q).

348 Direction of Tribunal if occupier fails to appear

- (1) If a person on whom a copy of an order and a notice is served under this Division fails to appear before the Tribunal in accordance with the notice, the Tribunal must direct the principal registrar to issue without delay a warrant of possession against all persons for the time being occupying the premises.
- (2) The Tribunal must not give a direction under subsection (1) unless it is satisfied that the copy of the possession order and the notice were served in accordance with this Division.

349 Order of Tribunal if occupier appears

If a person on whom a copy of an order and a notice is served under this Division appears to answer the notice, the Tribunal—

S. 349(b)
amended by
No. 52/1998
s. 236(q).

- (a) on giving both parties an opportunity to be heard, must determine the matter; and
- (b) if it is satisfied that the applicant is entitled to the premises, must direct the principal registrar to issue a warrant of possession against all persons for the time being occupying the premises; and
- (c) if it is not satisfied that the applicant is entitled to the premises, may cancel the possession order.

350 Effect of this Division

This Division has effect despite anything to the contrary in any other provision of this Act.

Division 4—Warrants of possession

351 Issue of warrant of possession

- (1) Subject to subsection (2), a person who obtains a possession order under this Part may apply to the principal registrar for a warrant of possession—
 - (a) immediately, if the possession order so provides; or
 - (b) within 6 months after the date of the possession order if the tenant or resident fails to comply with the possession order.
- (2) A person who obtains a possession order under Division 2 may apply to the principal registrar for a warrant of possession not more than 30 days after the date of the possession order.
- (3) An application under this section must be accompanied by the prescribed fee (if any).
- (4) Subject to this Division, a warrant must be executed within the time stated in the possession order which must not exceed 30 days after the date of issue of the warrant.

S. 351(1)
amended by
No. 52/1998
s. 236(q).

S. 351(2)
amended by
No. 52/1998
s. 236(q).

352 Postponement of issue of warrant in certain cases

- (1) The Tribunal may provide in a possession order under this Part in relation to rented premises that the issue of a warrant of possession be postponed for a period specified in the order, if the Tribunal is satisfied that—
 - (a) the tenant would suffer hardship if the issue of the warrant were not postponed; and
 - (b) the hardship would be greater than any hardship that the landlord or mortgagee (as the case may be) would suffer because of the postponement.

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- (2) The period of postponement specified in the order must not exceed 30 days after the date that the order is made.
 - (3) This section does not apply to—
 - (a) an order made on the application of a landlord who has given a notice to vacate the rented premises under sections 243 to 245; or
 - (b) an order made under Division 2.

353 Immediate issue of warrant if failure to comply during postponement

On the application of the landlord or mortgagee of rented premises, the Tribunal may order that a warrant of possession be issued without delay if the Tribunal is satisfied that, during any period of postponement specified in an order under section 352, the tenant—

- (a) has failed to pay any rent accrued due; or
- (b) has otherwise failed to comply with the tenancy agreement; or
- (c) has failed to comply with a provision of this Act relating to the tenancy agreement.

354 Extension of time for warrant to be executed

- (1) On the application of the person who obtained the warrant of possession, the Tribunal may from time to time make an order extending the time in which the warrant of possession may be executed.
- (2) An order under subsection (1) must not at any one time extend the time in which a warrant of possession may be executed by more than 30 days after the day on which the time for execution of the warrant would otherwise expire.

- (3) An order may not be made under subsection (1) if the time for execution of the warrant has passed.
- (4) This section does not apply to a warrant issued under a possession order made under Division 2.

355 Warrant of possession

- (1) A warrant of possession under this Part must—
 - (a) be in a form prescribed by rules made under the **Victorian Civil and Administrative Tribunal Act 1998**; and
 - (b) be directed—
 - (i) to a member of the police force; or
 - (ii) to an authorised person; and
 - (c) give brief details of the possession order; and
 - (d) be signed by the principal registrar.

S. 355(1)(a)
amended by
No. 45/2002
s. 90.

S. 355(1)(d)
amended by
No. 52/1998
s. 236(q).

- (2) The warrant of possession authorises the person to whom it is directed—
 - (a) to enter the rented premises, room and rooming house or site or caravan (as the case may be), by force if necessary; and
 - (b) with such assistance as is necessary—
 - (i) to compel all persons for the time being occupying the rented premises, room (other than a shared room), site or caravan (as the case may be) to vacate and give possession of them to the applicant for the order under which the warrant is issued; or
 - (ii) to compel any person named in the order to vacate a shared room.

S. 355(2)(b)
substituted by
No. 63/2005
s. 28.

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- (3) A warrant of possession does not authorise the person to whom it is directed to remove any goods from rented premises or a room in a rooming house or a site or caravan.
 - (4) Entry under a warrant of possession must not be made—
 - (a) between the hours of 6 p.m. and 8 a.m.; or
 - (b) on a Sunday or public holiday.
 - (5) The Minister may authorise any person or class of persons either generally or in a particular case to execute warrants of possession.

356 Lapsing of possession order and lapsing or cancellation of warrant of possession

- (1) A possession order under this Part is discharged if the applicant for the order does not—
 - (a) in the case of an order under Division 2, within 30 days after the date of the order; or
 - (b) in any other case, within 6 months after the date of the order—apply for the issue of a warrant of possession.
 - (2) A warrant of possession under this Part lapses if it is not executed—
 - (a) subject to paragraph (b), within the time stated in the order; or
 - (b) if the Tribunal has extended the time within which a warrant may be executed, within the further time that the Tribunal by order allows.
 - (3) The Tribunal may at any time cancel a warrant of possession issued under this Part.
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357 Execution of warrant

As soon as practicable, but not later than 60 days after a warrant of possession is issued, the person to whom the warrant is addressed must—

(a) return the warrant to the principal registrar;
and

S. 357(a)
amended by
No. 52/1998
s. 236(q).

(b) specify in writing whether the warrant has or has not been executed.

358 Offence to re-enter rooming house, site or caravan

(1) A person who is removed from a rooming house under a warrant of possession must not re-enter and take up possession of a room in the rooming house.

Penalty: 20 penalty units.

(2) A person who is removed from a site or caravan under a warrant of possession must not re-enter and take up possession of the site or caravan.

Penalty: 20 penalty units.

Division 5—Sheriff's powers to remove caravans

359 Removal of caravan from a caravan park

The principal registrar must notify the sheriff as soon as possible after a warrant of possession is returned if—

(a) a resident and any other occupants have been removed from a site under the warrant of possession; and

(b) the possession order under which the warrant of possession was issued directed the removal of the caravan on the site from the caravan park.

S. 359
amended by
No. 52/1998
s. 236(q).

360 Sheriff's powers to remove

- (1) After receiving a notice under section 359, the sheriff must remove the caravan and goods in it from the caravan park and store the caravan and any goods in a safe place.
- (2) Subject to subsection (3), the sheriff may destroy or dispose of goods if they are—
 - (a) of no monetary value; or
 - (b) perishable foodstuffs; or
 - (c) dangerous.
- (3) If personal documents are left in a caravan removed in accordance with subsection (1), the sheriff may remove them but must not destroy or dispose of them, except in accordance with sections 361, 362 and 363.

361 What happens to personal documents?

If personal documents are left behind, the sheriff must—

- (a) store the documents for a period of 90 days; and
- (b) before the end of the 90 day storage period, cause a notice to be inserted in the prescribed form in a newspaper circulating generally throughout Victoria of the sheriff's intention to dispose of the personal documents at the end of the 90 day period.

362 Disposal of personal documents after 90 days

- (1) If notice has been given in accordance with section 361 and the personal documents have not been claimed by the former resident or any other person giving satisfactory evidence of the person's right to them by the end of the 90 day storage period, then at the end of that period, the sheriff may dispose of the personal documents in any manner that he or she thinks fit.
- (2) Nothing in this section affects the operation of any other Act or law affecting the destruction or disposition of the documents.
- (3) If the sheriff has disposed of personal documents in accordance with this section, the sheriff may apply to the Tribunal for compensation for the costs of removal and storage of the documents, including the publication of a notice under section 361.
- (4) An application under subsection (3) must be made within 6 months after the personal documents have been disposed of.

363 Reclaiming documents before disposal

The former resident or any other person giving satisfactory evidence of the person's right to personal documents may reclaim personal documents removed by the sheriff before they are disposed of in accordance with section 362 if he or she pays to the sheriff any reasonable costs in relation to the removal and storage of those documents, including the publication of a notice under section 361.

364 Rightful owner may claim caravan and goods

The former resident or any other person giving satisfactory evidence of the person's right to do so may reclaim the caravan or any goods (other than personal documents or goods to which section 360(2) applies) within 90 days of the caravan's removal from the caravan park on payment of reasonable costs incurred by the sheriff in removing and storing or paying for the removal and storage of the caravan or goods.

365 Sale of caravan and goods

- (1) If the caravan or goods (other than personal documents) are not reclaimed, the sheriff may sell the caravan or goods by a public auction advertised in a newspaper circulating generally throughout Victoria at least 14 days before the auction.
- (2) If the caravan or any goods are not sold at the public auction, the sheriff may dispose of the caravan or goods in any manner that he or she thinks fit.
- (3) The proceeds of the sale or disposal remaining after deducting the reasonable costs incurred in—
 - (a) removing and storing or paying for the removal and storage of the caravan and any goods; and
 - (b) selling or attempting to sell and disposing of the caravan and any goods—

must be dealt with as unclaimed moneys in accordance with Part 3 of the **Unclaimed Moneys Act 1962** as if the sheriff were a business to which that Part applies.

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- (4) If the proceeds of the sale or disposal are insufficient to meet the reasonable costs incurred in—
- (a) removing and storing or paying for the removal and storage of the caravan and any goods; and
 - (b) selling or attempting to sell and disposing of the caravan and any goods—
- the sheriff may apply to the Tribunal for compensation for those costs.
- (5) An application under subsection (4) must be made within 6 months after the date of the sale or disposal under this section.

366 Tribunal may order compensation from Residential Tenancies Fund

- (1) On an application under section 362(3) or section 365(4), the Tribunal may—
- (a) make an order for compensation; or
 - (b) dismiss the application.
- (2) Compensation in respect of an order made under this section must be paid from the Residential Tenancies Fund.
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PART 8—VIOLENCE ON CERTAIN PREMISES

367 Definitions

In this Part—

managed high density building means a building which contains 2 or more rented premises and which has an on-site manager;

managed premises means—

- (a) a managed high density building; or
- (b) a rooming house; or
- (c) a caravan park—

and includes any common areas of that building or caravan park;

manager means on-site manager, rooming house owner or caravan park owner;

on-site manager in relation to a building or caravan park, means a person whose duties include—

- (a) the security of the building or caravan park; and
- (b) the day to day operational responsibility for the building or caravan park; and
- (c) being present at the building or caravan park or available to be present at least 7 hours a day, 5 days a week;

resident includes a tenant of rented premises in a managed high density building.

368 Manager may give person notice to leave—serious acts of violence

- (1) A manager of managed premises may give a resident a notice to leave the managed premises immediately if the manager has reasonable grounds to believe that—
- S. 368(1)
amended by
No. 45/2002
s. 91(1).
- (a) a serious act of violence by the resident has occurred on the managed premises; or
- (b) the safety of any person on the managed premises is in danger from the resident.
- (2) A manager of managed premises may give a resident's visitor a notice to leave the premises immediately if the manager has reasonable grounds to believe that—
- S. 368(2)
amended by
No. 45/2002
s. 91(1).
- (a) a serious act of violence by the visitor has occurred on the managed premises; or
- (b) the safety of any person on the managed premises is in danger from the resident's visitor.
- (3) A notice to leave under this section must be in the prescribed form.
- (4) A notice to leave under this section must be given as soon as it is possible for the manager to safely do so after the serious act of violence has occurred or the safety of a person on the premises has been endangered.
- S. 368(4)
inserted by
No. 45/2002
s. 91(2).

s. 368A

s. 368A
inserted by
No. 45/2002
s. 92.

368A Offence to give notice to leave or purported notice to leave without reasonable grounds

A manager of managed premises must not give—

- (a) a notice to leave under section 368; or
- (b) a document which purports to be a notice to leave under section 368—

unless the manager has reasonable grounds to believe that—

- (c) a serious act of violence by a resident or a resident's visitor has occurred on the rented premises; or
- (d) the safety of any person on the managed premises is in danger from a resident or a resident's visitor.

Penalty: 20 penalty units.

369 Offence to remain on premises if given notice to leave

A person who has been given a notice to leave managed premises under section 368 must not remain on the managed premises after receiving that notice.

Penalty: 10 penalty units.

370 What happens to a tenancy agreement or residency right if a notice to leave is given?

- (1) If a resident is given a notice to leave managed premises under section 368, the tenancy agreement or residency right of that resident in respect of the rented premises, room or site in the managed premises is suspended.

(2) Despite subsection (1), unless the Tribunal makes an order under section 376(1)(b), the resident is still required to pay—

S. 370(2)
amended by
No. 45/2002
s. 93.

- (a) any rent under that tenancy agreement or residency right in respect of the period that the tenancy agreement or residency right is suspended; and
- (b) in the case of a caravan in a caravan park, any hiring charge in respect of the period that the residency right is suspended.

371 How long does a suspension last?

A suspension under this Part remains in force—

- (a) until the end of 2 business days after it commences; or
- (b) if an application is made under section 374, until the Tribunal has heard and determined the application.

372 Offence to re-enter premises during suspension

A resident whose tenancy agreement or residency right has been suspended under this Part must not enter the managed premises during the period that the suspension is in force.

Penalty: 10 penalty units.

373 Notice to principal registrar

A manager who gives a resident a notice to leave managed premises under section 368, must give the principal registrar written notice of the giving of that notice to leave no later than the end of the next business day after the day on which the notice to leave was given.

Penalty: 20 penalty units.

S. 373
amended by
No. 52/1998
s. 236(q).

374 Landlord, rooming house owner or caravan park owner may make urgent application to Tribunal

- (1) If a tenancy agreement or residency right is suspended under this Part, the landlord, rooming house owner or caravan park owner (as the case may be) may apply to the Tribunal for an order that the tenancy agreement or residency right be terminated.
- (2) An application under subsection (1) must be made before the end of 2 business days after the suspension of the tenancy agreement or residency right.

375 Tribunal must hear application urgently

The Tribunal must hear an application under section 374 within 2 business days after the application is made.

376 What can the Tribunal order?

- (1) After hearing an application under section 374, the Tribunal may—
 - (a) if the Tribunal determines that it was appropriate to give the resident the notice to leave the managed premises—
 - (i) make an order terminating the tenancy agreement or residency right as at the date of that order; or
 - (ii) if the Tribunal is satisfied that the circumstances giving rise to the giving of the notice to leave will not be repeated, order that the suspension of the tenancy agreement or residency right cease and that the resident be allowed to resume occupation of the rented premises, room or site under the tenancy agreement or residency right; or

- (b) in any other case, order that the suspension of the tenancy agreement or residency right cease and that the resident be allowed to resume occupation of the rented premises, room or site under the tenancy agreement or residency right.
- (2) The Tribunal may make any ancillary or incidental orders that the Tribunal considers appropriate.
- (3) If the Tribunal orders under subsection (1)(b) that the suspension of the tenancy agreement or residency right cease—
 - (a) the resident is not required to pay rent or hiring charges in respect of the period of the suspension; and
 - (b) the Tribunal must order that compensation be paid to the resident comprising—
 - (i) a refund of the rent or hiring charges paid during the period of the suspension; and
 - (ii) any reasonable expenses incurred by the resident relating to the period of suspension.

S. 376(3)
substituted by
No. 45/2002
s. 94.

377 Offence to allow occupation of premises pending application or hearing

- (1) A landlord of rented premises in a managed high density building must not allow a person who is not a party to a tenancy agreement suspended under section 370 to lease or occupy the rented premises during the period of suspension.

Penalty: 20 penalty units.

s. 377A

- (2) A rooming house owner must not allow a person who is not a party to a residency right suspended under section 370 to occupy the room in the rooming house to which that residency right applies during the period of suspension.

Penalty: 20 penalty units.

- (3) A caravan park owner must not allow a person who is not a party to a residency right suspended under section 370 to occupy the site in the caravan park to which that residency right applies during the period of suspension.

Penalty: 20 penalty units.

- (4) Despite subsection (2), a rooming house owner may permit a new resident to occupy a shared room in the rooming house if the room capacity of the room (including the resident with the suspended residency right) would not be exceeded.

S. 377(4)
inserted by
No. 63/2005
s. 29.

S. 377A
inserted by
No. 45/2002
s. 95.

377A Notice to leave prohibited if notice to vacate under section 244, 279 or 303 already given

A manager is not entitled to give a notice to leave under section 368 in respect of an act or omission if—

- (a) a landlord has given a notice to vacate under section 244 in respect of that act or omission; or
- (b) a rooming house owner has given a notice to vacate under section 279 in respect of that act or omission; or
- (c) a caravan park owner has given a notice to vacate under section 303 in respect of that act or omission.

**PART 9—GOODS LEFT BEHIND BY TENANTS AND
RESIDENTS**

Division 1—Preliminary

378 Application of this Part

This Part applies if—

- (a) in the case of rented premises, the tenancy agreement has been terminated and goods have been left behind;
- (b) in the case of a rooming house, a resident has vacated a room and goods have been left behind;
- (c) in the case of a caravan park, the caravan park owner, caravan park mortgagee, caravan owner or caravan mortgagee has taken possession of a caravan which a resident has vacated and goods have been left behind.

379 Definitions

In this Part—

owner of premises means—

- (a) in relation to rented premises in respect of which a tenancy agreement has been terminated, the former landlord; and
- (b) in relation to a rooming house, the rooming house owner; and
- (c) in relation to a caravan or caravan park, the caravan park owner, caravan park mortgagee, caravan owner or caravan mortgagee;

stored goods means—

- (a) in relation to rented premises in respect of which a tenancy agreement has been terminated, goods left behind on rented premises which are stored in accordance with section 386;
- (b) in relation to a rooming house, goods left behind in a rooming house, of which a rooming house owner must take reasonable care in accordance with section 387;
- (c) in relation to a caravan or caravan park, goods left behind in a caravan, of which a caravan park owner, caravan park mortgagee, caravan owner or caravan mortgagee must take reasonable care in accordance with section 388.

Division 2—Personal documents left behind

380 What happens if personal documents are left behind by a tenant or resident?

If a tenant or resident leaves behind personal documents, the owner of premises—

- (a) must take reasonable care of the personal documents for a period of 90 days; and
- (b) may remove but must not destroy or dispose of the personal documents, except in accordance with this Part; and
- (c) must take reasonable steps to notify the former tenant or resident as to when and from where the documents may be collected.

S. 380(a)
amended by
No. 45/2002
s. 66(a).

S. 380(c)
amended by
No. 45/2002
s. 66(b).

* * * * *

S. 380(d)
repealed by
No. 45/2002
s. 66(c).

381 Disposal of personal documents after 90 days

S. 381
(Heading)
inserted by
No. 45/2002
s. 67(1).

- (1) If personal documents have not been reclaimed by a person who has a lawful right to the documents by the end of the 90 day period referred to in section 380(a), then at the end of that period, the owner of premises may dispose of the personal documents.
- (2) Nothing in this section affects the operation of any other Act or law affecting the destruction or disposition of the documents.

S. 381(1)
amended by
No. 45/2002
s. 67(2).

Note

It may be an offence under certain legislation of the State and Commonwealth to destroy certain documents.

Note to
s. 381(2)
inserted by
No. 45/2002
s. 67(3).

- (3) An owner of premises may recover the costs of removal, taking reasonable care and notification in relation to personal documents from the Residential Tenancies Fund.

382 Reclaiming personal documents before disposal

- (1) A person who has a lawful right to the personal documents may reclaim the personal documents left behind at any time before they are disposed of in accordance with section 381 if he or she pays the owner of premises the reasonable costs in relation to the notification of the former tenant or resident and the removal and taking reasonable care of those documents.

- (2) If a person who has a lawful right to personal documents reclaims the documents and pays the costs set out in subsection (1), the owner of premises must not refuse to give the documents to that person.

Penalty: 20 penalty units.

Division 3—Goods left behind

383 Application of Division

This Division does not apply to personal documents.

384 Disposal of certain goods left behind

- (1) If goods have been left behind, the owner of premises may remove and destroy or dispose of the goods if—
- (a) they are of no monetary value; or
 - (b) they are perishable foodstuffs; or
 - (c) they are dangerous.
- (2) If goods of monetary value have been left behind, the owner of premises may remove and destroy or dispose of those goods if the total estimated cost of the removal, storage and sale of all those goods combined is greater than the total monetary value of all those goods combined.
- (3) Subsection (2) does not apply to goods to which subsection (1) applies.
- (4) Nothing in this section affects the operation of any other Act or law affecting the removal, destruction or disposal of goods.

S. 384(2)
substituted by
No. 45/2002
s. 68.

S. 384(3)
inserted by
No. 45/2002
s. 68.

S. 384(4)
inserted by
No. 45/2002
s. 68.

Note

Other legislation of the State and Commonwealth may deal with the disposal of goods for example, the **Dangerous Goods Act 1985**.

385 Request to Director to state whether goods can be removed and destroyed or disposed of

An owner of premises may request the Director in writing to give an opinion as to whether or not particular goods are goods which may be removed and destroyed or disposed of under section 384.

386 What must a landlord do about goods which are left behind?

- (1) A former landlord must store goods (other than goods which may be removed and destroyed or disposed of under section 384) which are left behind on the premises in a safe place and manner for not less than 28 days.
- (2) Before the end of 7 days after goods are stored under subsection (1), the former landlord—
 - (a) if the former tenant has given a forwarding address, must send a notice to the former tenant in the prescribed form at that address; or
 - (b) if the former tenant has not given a forwarding address, must cause notice in the prescribed form to be inserted in a newspaper circulating generally throughout Victoria.

387 What must a rooming house owner do about goods left behind?

A rooming housing owner must—

- (a) take reasonable care of any goods (other than goods which may be removed and destroyed or disposed of under section 384) left behind when a resident vacates a room; and
- (b) take reasonable steps to notify a former resident as to when and from where the goods can be collected.

388 What must a caravan park owner etc. do about goods left behind?

A caravan park owner, caravan park mortgagee, caravan owner or caravan mortgagee who takes possession of a caravan vacated by a resident must—

- (a) take reasonable care of any goods (other than goods which may be removed and destroyed or disposed of under section 384) left behind when the resident vacates the caravan; and
- (b) take reasonable steps to notify the former resident as to when and from where the goods left behind can be collected.

389 Rightful owner may reclaim stored goods before sale

(1) A person who has a lawful right to stored goods may reclaim those goods at any time before they are sold if he or she pays the owner of premises the reasonable costs incurred—

- (a) in the case of a former landlord—
 - (i) in notifying the former tenant; and
 - (ii) in the removal and storage of the goods; and
 - (iii) in organising the sale of the goods; or
- (b) in the case of a rooming house owner, caravan park owner, caravan park mortgagee, caravan owner or caravan mortgagee—
 - (i) in notifying the former resident; and
 - (ii) in storing the goods; and
 - (iii) in organising the sale of the goods.

- (2) If a person who has a lawful right to stored goods pays the costs set out in subsection (1), the owner of premises must not refuse to give the goods to that person.

Penalty: 10 penalty units.

390 What if a caravan owned by a resident is abandoned on site?

If a caravan owned by a resident has been abandoned and an abandonment order has been made under section 301, the caravan park owner, caravan owner, caravan park mortgagee or caravan mortgagee may deal with the caravan in accordance with this Part.

391 Sale of stored goods

If stored goods left behind are not reclaimed within 28 days after the date on which they became stored goods, the owner of premises must cause the goods to be sold by public auction as soon as practicable.

392 Sale of stored goods by public auction to be advertised

The owner of premises must advertise the sale of stored goods by public auction in the prescribed form in a newspaper circulating generally throughout Victoria at least 14 days before the auction.

393 Entitlement to removal and storage costs

- (1) If stored goods are sold by public auction within 8 weeks after the date on which they became stored goods, the owner of premises is entitled to retain out of the proceeds of sale—

-
- (a) the reasonable costs incurred in—
- (i) removing and storing the goods or taking reasonable care of the goods (as the case may be); and
 - (ii) trying to notify the former tenant or resident; and
 - (iii) selling the goods; and
- (b) any money owed to the owner of premises under a Tribunal determination.
- (2) An owner of premises must deal with any money left over after any deductions under subsection (1) in accordance with Part 3 of the **Unclaimed Moneys Act 1962** as if the owner of premises were a business to which that Part applies.
- (3) If stored goods are offered for sale at a public auction in accordance with section 391 and are not sold, the owner of premises may dispose of the stored goods.
- (4) An owner of premises is not liable to anyone for loss or damage caused as a result of—
- (a) the sale of stored goods in accordance with this Part; or
 - (b) the disposal of stored goods in accordance with subsection (3).

S. 393(3)
substituted by
No. 45/2002
s. 69(1).

S. 393(4)
inserted by
No. 45/2002
s. 69(1).

394 Purchaser takes good title

A purchaser of stored goods sold in accordance with this Part has good title unless he or she has notice of—

- (a) a defect in title or want of title in the former tenant or former resident; or
- (b) a failure of the owner of premises to comply with this Part in relation to the sale of the goods.

Division 4—Orders of Tribunal

395 What if proceeds of sale are not sufficient to cover costs?

- (1) If the proceeds of sale of stored goods are not sufficient to cover the owner of premises' reasonable costs of removal, storage, notification and sale, the owner of premises may apply to the Tribunal for compensation.
- (2) An application under this section must be made within 6 months after the date of termination of the tenancy agreement or residency right.
- (3) In this section *stored goods* includes goods stored in reliance on a written statement of the Director under section 385 that in his or her opinion particular goods are goods which may not be removed and destroyed or disposed of under section 384.

S. 395(3)
amended by
No. 45/2002
s. 69(2).

396 What if goods or documents are disposed of in contravention of this Part?

If an owner of premises destroys, disposes of or sells a former tenant's or former resident's goods or personal documents, otherwise than in accordance with this Part, the former tenant, former resident or a person who has a lawful right to those goods or documents may apply to the Tribunal for compensation.

397 What if goods or documents are wrongfully retained?

If an owner of premises wrongfully retains and refuses to give up goods or personal documents left behind, the former tenant, former resident or a person who has a lawful right to those goods or documents may apply to the Tribunal for an order for the return of the goods or personal documents or for compensation or both.

398 What if goods or documents are damaged or lost?

If the owner of premises wilfully or recklessly damages or loses stored goods or personal documents, a former tenant, former resident or a person who has a lawful right to those goods or documents may apply to the Tribunal for compensation.

399 What if stored goods have been sold in accordance with this Part?

If an owner of premises has sold a former tenant's or former resident's stored goods in accordance with this Part, the former tenant, former resident or a person who has a lawful right to those goods is not entitled to the return of the goods but may apply to the Tribunal for a declaration that the money dealt with in accordance with Part 3 of the **Unclaimed Moneys Act 1962** should be paid to that person.

400 What if personal documents are disposed of in accordance with section 381?

- (1) If the owner of premises has disposed of personal documents in accordance with section 381, the owner of premises may apply to the Tribunal for compensation for the costs of removal, taking reasonable care of the documents and notification in relation to those documents.
- (2) An application under this section must be made within 6 months after the date of termination of the tenancy agreement or residency right.

401 What orders can the Tribunal make?

On an application under this Division, the Tribunal may—

- (a) in the case of an application under section 395, 396, 398 or 400, make an order for compensation; or
- (b) in the case of an application under section 397—
 - (i) make an order for the return of the goods or personal documents; or
 - (ii) make an order for compensation; or
 - (iii) make an order for both compensation and the return of the goods or personal documents; or
- (c) in the case of an application under section 399, make a declaration in accordance with that section; or
- (d) dismiss the application.

402 Payment of compensation to owner who relies on Director's statement

- (1) The Tribunal may make an order for compensation to be paid to an owner of premises if—
 - (a) the Tribunal is satisfied that the owner of premises has relied on the Director's statement of opinion under section 385; and
 - (b) the owner of premises has removed, destroyed or disposed of the goods left behind; and
 - (c) the owner of premises is subsequently found liable to the owner of the goods left behind.

-
- (2) The compensation must be for an amount equal to the amount for which the owner of premises is found liable together with reasonable costs in relation to the action.

403 When is compensation payable out of the Residential Tenancies Fund?

Compensation in respect of the following orders must be paid from the Residential Tenancies Fund—

- (a) an order under section 401 in respect of an application under section 395 or 400; or
- (b) an order under section 402.
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**PART 10—BONDS AND THE RESIDENTIAL TENANCIES
BOND AUTHORITY**

Division 1—Interpretation

404 Definitions

In this Part—

bond in Divisions 3 and 4, includes an amount or the total of the amounts (if any) which are required to be added to the bond pursuant to section 439;

Director of Housing voucher means a voucher issued by the Director of Housing or an agent of the Director of Housing for payment of an amount of bond on behalf of a tenant;

S. 404 def. of
*Director of
Housing
voucher*
inserted by
No. 93/2003
s. 4.

landlord includes—

- (a) rooming house owner;
- (b) caravan park owner;
- (c) caravan owner;
- (d) in Divisions 3 and 4, former landlord;
- (e) agent of a landlord or a person referred to in paragraphs (a) to (d);

rent includes hiring charge;

rented premises includes room, site and caravan;

tenancy agreement includes residency right;

tenant includes—

- (a) resident; and
- (b) in Divisions 3 and 4, former tenant and former resident.

Division 2—Payment of bonds to Residential Tenancies Bond Authority

405 Bond lodgement form

- (1) A landlord who receives a bond from a tenant must at the time the bond is paid—
 - (a) complete and sign a bond lodgment form containing the prescribed information; and
 - (b) give the form to the tenant to sign.

Penalty: 5 penalty units.

- (2) If the Director of Housing or an agent of the Director of Housing has paid an amount of bond on behalf of the tenant, the bond lodgment form must state that fact.
- (3) The tenant must sign the completed bond lodgment form on payment of the bond.
- (4) On the signing by the tenant of the bond lodgment form, the landlord must give a copy of that form to the tenant.

Penalty: 5 penalty units.

406 Duty to pay bond to Authority

If a landlord receives a bond from a tenant, the landlord must, within 10 business days after the bond is received, give the amount of the bond to the Authority together with the completed bond lodgment form.

Penalty: 10 penalty units.

S. 405(2)
amended by
No. 93/2003
s. 5.

S. 405(4)
amended by
No. 45/2002
s. 70(1).

S. 406
amended by
No. 45/2002
s. 70(2).

407 Receipt for bond

- (1) The Authority, within 7 days after receiving an amount of the bond from a landlord, must give a receipt containing the prescribed information to—
 - (a) the landlord; and
 - (b) the tenant who paid the bond; and
 - (c) if an amount of bond was paid on behalf of the tenant by the Director of Housing or an agent of the Director of Housing, the Director of Housing.
- (2) The receipt may be given in the manner determined by the Authority.

S. 407(1)(c)
amended by
No. 93/2003
s. 6.

408 Bond held on trust

A landlord who receives a bond from a tenant holds the bond on trust for the tenant until the bond is paid to the Authority.

409 What if the landlord is late in lodging the bond?

- (1) A tenant may notify the Authority if the tenant does not receive a receipt from the Authority within 15 business days after giving the amount of bond to the landlord.
- (2) If the landlord gives an amount of bond to the Authority after the tenant notifies the Authority under subsection (1) in respect of that bond, the amount of bond is deemed for the purposes of this Part to be lodged on the date that the notice is given.

S. 409(1)
amended by
No. 45/2002
s. 71.

410 Payment of bond into Residential Bonds Account

The Authority must pay all money it receives under this Division into the Residential Bonds Account.

s. 410A

S. 410A
(Heading)
amended by
No. 93/2003
s. 7(1).
S. 410A
inserted by
No. 45/2002
s. 72.

410A Payment of bond by cheque, Director of Housing voucher or money order

S. 410A(1)
substituted by
No. 93/2003
s. 7(2).

- (1) Without limiting any manner in which a bond may be paid, for the purposes of this Division, a landlord receives a bond from a tenant if the tenant gives the landlord the amount of the bond—
 - (a) in the form of a cheque made payable to the Authority; or
 - (b) in the form of a money order made payable to the Authority; or
 - (c) in the form of a Director of Housing voucher; or
 - (d) in a combination of 2 or more forms specified in paragraphs (a), (b) and (c).
- (2) Despite anything to the contrary in this Division, a tenant who gives a landlord a cheque for an amount of bond made payable to the Authority is not to be taken to have paid a bond if the cheque is not honoured on its presentation.

Division 3—Payment out of bonds

411 Payment out of bonds

The Authority must not pay out an amount of bond under this Part except—

- (a) in accordance with an application for a refund made by the landlord and the tenant;
or

- (b) in accordance with a determination of the Tribunal; or
- (c) in accordance with an order of a court; or
- (d) in the case of an amount of bond paid by the Director of Housing or an agent of the Director of Housing on behalf of a tenant, in accordance with—
 - (i) paragraph (b) or (c); or
 - (ii) section 411A; or
 - (iii) section 413(1) or (1A).

S. 411(c)
amended by
No. 93/2003
s. 8(a).

S. 411(d)
inserted by
No. 93/2003
s. 8(b).

411A Payment out of certain Director of Housing bonds held on 30 June 2003

S. 411A
inserted by
No. 93/2003
s. 9.

- (1) This section applies if—
 - (a) the Authority, on 30 June 2003, holds an amount of bond paid by the Director of Housing or an agent of the Director of Housing on behalf of a tenant; and
 - (b) the Authority receives a new bond (whether before, on or after the commencement of section 9 of the **Residential Tenancies (Amendment) Act 2003**) in relation to a tenancy agreement for the same premises to which the amount of bond referred to in paragraph (a) relates; and
 - (c) no application for a refund of the amount of bond referred to in paragraph (a) is made in accordance with section 413(1) or 413(1A) within 12 months of the date on which the Authority receives the new bond referred to in paragraph (b).

s. 412

- (2) The Authority may pay to the Director of Housing the amount of bond referred to in subsection (1)(a).
- (3) If, after the Authority pays an amount under subsection (2), the Authority holds a remaining amount of bond in relation to the tenancy agreement for which the amount of bond referred to in subsection (1)(a) was paid, the Authority may pay to the tenant the remaining amount of bond.

412 Payment out by agreement

- (1) The Authority must pay an amount of bond in accordance with an application under this section.
- (2) A landlord and a tenant may apply jointly to the Authority for a refund of the bond paid in respect of a tenancy agreement.
- (3) The application must be made in the form and manner approved by the Director.
- (4) The application may request that the bond be apportioned between the landlord and the tenant.
- (5) If the bond or part of the bond is to be paid to the landlord, the application must be signed by the tenant not earlier than 7 days before the termination date in respect of the tenancy agreement.
- (6) This section does not apply if the amount of bond was paid on behalf of a tenant by the Director of Housing or an agent of the Director of Housing.

S. 412(3)
amended by
No. 45/2002
s. 73(1).

S. 412(6)
amended by
No. 93/2003
s. 10.

413 Payment to Director of Housing by agreement

- (1) The Authority must pay an amount of bond to the Director of Housing if the landlord and tenant under the tenancy agreement in respect of which the bond was paid apply jointly to the Authority for payment of that amount to the Director of Housing.
- (1A) A landlord and the Director of Housing may apply jointly to the Authority for a refund to the Director of Housing of the amount of bond paid by the Director of Housing or an agent of the Director of Housing on behalf of a tenant if the landlord is unable to obtain the tenant's agreement to make an application to the Authority under subsection (1). **S. 413(1A) inserted by No. 93/2003 s. 11(1).**
- (2) The application must be made in a form and manner approved by the Director. **S. 413(2) amended by No. 45/2002 s. 73(2).**
- (3) If any part of the amount of bond is to be paid to the landlord, the application must not be made earlier than 7 days before the termination date in respect of the tenancy agreement. **S. 413(3) inserted by No. 93/2003 s. 11(2).**
- 413A Authority to notify Director of Housing on receipt of new bond** **S. 413A inserted by No. 93/2003 s. 12.**
- As soon as practicable after receiving a new bond from a landlord in respect of a tenancy agreement for the same premises for which the Authority already holds an amount of bond paid by the Director of Housing or an agent of the Director of Housing on behalf of a tenant, the Authority must notify the Director of Housing that the Authority has received a new bond in respect of a tenancy agreement for those premises.

s. 414

414 Application to Tribunal by landlord

S. 414(1)
amended by
No. 52/1998
s. 236(s)(i).

- (1) A landlord may apply to the Tribunal under this section if—
- (a) the tenant has delivered up vacant possession of, or abandoned the rented premises; and
 - (b) an amount of rent has accrued due and is unpaid; and
 - (c) after making all reasonable inquiries, the current address of the tenant is unknown to the landlord.

S. 414(2)
repealed by
No. 52/1998
s. 236(s)(ii),
new s. 414(2)
inserted by
No. 45/2002
s. 74(1).

- (2) An application under this section must be made within 10 business days after—
- (a) the tenant delivers up vacant possession of the rented premises; or
 - (b) the landlord becomes aware that the tenant has abandoned the rented premises.

S. 414(3)
repealed by
No. 45/2002
s. 74(2).

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S. 415
substituted by
No. 52/1998
s. 237.

415 Determination of application

- (1) If an application is made under section 414 and the Tribunal is satisfied that it is proper to do so, the Tribunal must—
- (a) make a determination of the amount of rent owing to the landlord by the tenant at the date of the application; and
 - (b) make an order directing the Authority to pay out an amount of bond to or on account of the landlord in respect of the rent owing.

- (2) The Tribunal may make a determination and order under subsection (1) without a hearing whether or not the parties agree to dispense with the hearing.
- (3) The Tribunal's powers under this section are exercisable by the principal registrar.

416 Application to Tribunal by tenant or Director of Housing

S. 416
(Heading)
inserted by
No. 93/2003
s. 13(1).

- (1) A tenant may apply to the Tribunal for a determination directing the Authority to pay out an amount of bond to or on account of the tenant if the tenant is unable to obtain the landlord's agreement to make an application to the Authority for a refund.
- (2) The Tribunal cannot determine an application under this section until the tenant has vacated the rented premises.
- (3) An application may be made under this section by the Director of Housing instead of the tenant if an amount of bond was paid on behalf of a tenant by the Director of Housing or an agent of the Director of Housing.

S. 416(3)
amended by
No. 93/2003
s. 13(2).

417 Application to Tribunal by landlord

- (1) A landlord may apply to the Tribunal for a determination directing the Authority to pay an amount of bond to or on account of the landlord if—
 - (a) the landlord is unable to obtain the tenant's agreement to make an application to the Authority for a refund; and
 - (b) the landlord considers that the landlord is entitled under section 418 or 419 to a refund of that amount of bond.

s. 418

S. 417(2)
amended by
No. 45/2002
s. 75.

- (2) An application under this section must be made within 10 business days after—
- (a) the tenant delivers up vacant possession of the rented premises; or
 - (b) the landlord becomes aware that the tenant has abandoned the rented premises.

418 Application by landlord where rent unpaid

A landlord may apply to the Tribunal under section 417 if—

- (a) the tenant has delivered up vacant possession of, or abandoned, the rented premises; and
- (b) an amount of rent has accrued due and is unpaid.

419 Application by landlord on other grounds

- (1) A landlord may apply to the Tribunal under section 417 if the landlord believes that the landlord is entitled to an amount of bond as compensation for loss or damage suffered by the landlord on account of any one or more of the following—
- (a) damage caused to the rented premises or common areas by the tenant or the tenant's visitor, other than fair wear and tear;
 - (b) any act or omission of the tenant or the tenant's visitor, other than fair wear and tear, that occasioned the loss of goods belonging to the landlord;
 - (c) the failure by the tenant to keep the rented premises in a reasonably clean condition, fair wear and tear excepted;
 - (d) the abandonment of the rented premises by the tenant;

- (e) the liability of the landlord for charges payable by the tenant that are or may be recoverable by the person to whom they are owed from the landlord.

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S. 419(2)
repealed by
No. 52/1998
s. 238(a).

420 Determination by Tribunal

The Tribunal must determine any application made to it under section 416 or 417.

421 Bond paid by Director of Housing

- (1) The Director of Housing is a party to any proceeding before the Tribunal in relation to an amount of bond which was paid on behalf of a tenant by the Director of Housing or an agent of the Director of Housing.

S. 421(1)
amended by
No. 93/2003
s. 14(1).

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S. 421(2)
repealed by
No. 52/1998
s. 238(b).

- (3) The Authority must pay to the Director of Housing or an agent of the Director of Housing and not to the tenant any amount of bond to which the tenant is entitled under this Part if—

- (a) the bond lodgment form states that the amount of bond was paid on behalf of the tenant by the Director of Housing or an agent of the Director of Housing; or

S. 421(3)(a)
amended by
No. 93/2003
s. 14(2).

- (b) the Director of Housing advises the Authority in writing that the amount of bond was paid on behalf of a tenant by the Director of Housing or an agent of the Director of Housing.

S. 421(3)(b)
amended by
No. 93/2003
s. 14(3).

422 Unclaimed money

If the Authority is required under this Part to pay to a person the amount or part of the amount of a bond but is unable to do so because the whereabouts of the person are unknown to the Authority, the amount or part must be dealt with as unclaimed moneys in accordance with Part 3 of the **Unclaimed Moneys Act 1962** as if the Authority were a business to which that Part applies.

423 Prohibition of claims

- (1) No further claim lies against the Authority, the Residential Bonds Account or the Residential Bonds Investment Income Account in respect of an amount of bond once the Authority has in good faith and in accordance with this Part paid that amount out of those Accounts.
- (2) Despite subsection (1), the Authority may in its absolute discretion, pay as compensation to a person an amount not exceeding the amount of the bond paid out if the Authority is satisfied that the person would have been entitled to a refund if the bond had not been paid out to another person on the fraudulent application of that other person.

S. 423(2)
amended by
No. 45/2002
s. 76.

Division 4—General provisions relating to bonds

424 Notice of assignment or transfer by landlord

- (1) If a landlord assigns or transfers the landlord's rights and duties under a tenancy agreement to another person, the landlord and the person to whom the rights and duties are assigned or transferred must notify the Authority in accordance with this section of that assignment or transfer if a bond has been paid in relation to the tenancy agreement.

Penalty: 10 penalty units.

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- (2) A notice under subsection (1) must—
- (a) contain the prescribed information; and
 - (b) be signed by the landlord and the person to whom the rights and duties are assigned or transferred; and
 - (c) be given to the Authority within 5 days after the assignment or transfer takes effect.
- (3) The landlord must give the tenant under the tenancy agreement a copy of the notice under subsection (1).

Penalty: 10 penalty units.

425 Notice of assignment or transfer by tenant

- (1) If a tenant assigns or transfers any of the tenant's rights and duties under a tenancy agreement to another person, the landlord and the tenant and the person to whom the rights and duties are assigned or transferred must notify the Authority in accordance with this section of that assignment or transfer if a bond has been paid in respect of the tenancy agreement.

Penalty: 10 penalty units.

- (2) A notice under subsection (1) must—
- (a) contain the prescribed information; and
 - (b) be signed by the tenant, the landlord and the person to whom the rights and duties are assigned or transferred; and
 - (c) be given to the Authority within 5 days after the assignment or transfer takes effect.

426 Agent to produce authorisation on request

An agent for a landlord must, at the request of the Authority, produce evidence of the agent's authorisation to act as agent under this Part.

427 Authority to record names

- (1) The Authority must register—
- (a) the name of each landlord and tenant who appears on the bond lodgment form for a bond; and
 - (aa) in the case of a bond lodgment form that states that an amount of bond has been paid by the Director of Housing or an agent of the Director of Housing on behalf of a tenant—
 - (i) the fact that the amount of bond has been so paid; and
 - (ii) the amount of the bond that has been so paid; and
 - (b) the name of each assignee or transferee of whom the Authority is given notice under section 424 or 425.
- (2) The Authority must not, except in the prescribed circumstances, pay out an amount of bond to any person unless the name of that person is registered under subsection (1).

S. 427(1)(aa)
inserted by
No. 93/2003
s. 15.

428 Tenant must not use bond as rent

A tenant must not refuse to pay rent on the ground that the tenant intends to regard as rent paid by the tenant the bond or any part of the bond paid in respect of the rented premises.

Penalty: 10 penalty units.

Division 5—Residential Tenancies Bond Authority

429 Establishment of Authority

- (1) There is established a Residential Tenancies Bond Authority.
- (2) The Authority—
 - (a) is a body corporate with perpetual succession;
 - (b) shall have an official seal;
 - (c) may acquire, hold and dispose of real and personal property;
 - (d) may sue and be sued in its corporate name;
 - (e) may do and suffer all acts and things that bodies corporate may by law do and suffer.
- (3) The official seal of the Authority must be kept in the custody that the Authority directs and must not be used except as authorised by the Authority.
- (4) All courts must take judicial notice of the official seal of the Authority on a document and must presume that it was properly sealed.

430 Constitution of Authority

The Authority is constituted by the Director.

431 Functions of Authority

The functions of the Authority are—

- (a) to collect and disburse bond money paid to the Authority under this Act;
- (b) to establish and administer—
 - (i) a Residential Bonds Account; and
 - (ii) a Residential Bonds Investment Income Account;

s. 432

S. 431(ca)
inserted by
No. 93/2003
s. 16.

S. 431(cb)
inserted by
No. 93/2003
s. 16.

(c) to invest money held in those Accounts in accordance with this Act;

(ca) to collect the information contained in bond lodgment forms given to the Authority and other information kept by the Authority in relation to bonds held by the Authority;

(cb) to disclose the information (other than persons' names) referred to in paragraph (ca), whether it was collected before, on or after the commencement of section 16 of the **Residential Tenancies (Amendment) Act 2003**, to the Director of Housing for the purpose of the use of that information by the Director of Housing in research, compiling statistics and public education;

(d) to carry out any other function conferred on it by this Act.

432 Powers of Authority

(1) The Authority has power to do anything that is necessary or convenient to be done for or in connection with the carrying out of its functions.

(2) Without limiting subsection (1), the Authority may enter into any arrangements or agreements with any person or body to act as its agent in the carrying out of any of its functions under this Part except its powers under sections 423(2) and 437.

433 Authority subject to Minister's general direction and control

The Authority is subject to the general direction and control of the Minister in carrying out its powers and functions.

434 Delegation

The Authority may, by instrument, delegate to any employee of the public service any of its powers or functions, except this power of delegation and its powers under sections 423(2) and 437.

S. 434
amended by
No. 46/1998
s. 7(Sch. 1).

Division 6—Bond Accounts

435 Residential Bonds Account

- (1) The Authority must establish an account to be called the Residential Bonds Account.
- (2) There must be paid into the Residential Bonds Account all amounts of bond received by the Authority under this Act.
- (3) The Authority must pay out of the Residential Bonds Account all amounts of bond—
 - (a) authorised by or under this Act to be paid out of the Residential Bonds Account; or
 - (b) directed by the Tribunal or a court to be paid out of the Residential Bonds Account.

436 Residential Bonds Investment Income Account

- (1) The Authority must establish an account to be called the Residential Bonds Investment Income Account.
- (2) There must be paid into the Residential Bonds Investment Income Account any amount of interest received on the investment of the Residential Bonds Account and the Residential Bonds Investment Income Account.
- (3) The Authority must pay out of the Residential Bonds Investment Income Account—
 - (a) any amount required for the administration of this Part; and

- (b) any amount authorised by or under this Act to be paid out of the Residential Bonds Investment Income Account.

437 Residential Tenancies Fund

The Authority may pay into the Residential Tenancies Fund out of the Residential Bonds Investment Income Account any amount which the Authority determines should be paid into the Residential Tenancies Fund.

438 Borrowing and investment powers of Authority

- (1) The Authority must open and maintain separate accounts at an authorised deposit-taking institution or institutions within the meaning of the Banking Act 1959 of the Commonwealth in the State for the purposes of the Residential Bonds Account and the Residential Bonds Investment Income Account.
- (2) The Authority has the powers conferred on it by the **Borrowing and Investment Powers Act 1987**.

439 Additional amounts

- (1) The Minister may from time to time make a declaration under this section providing for the payment of an amount or amounts in respect of bonds.
- (2) Before making a declaration under this section, the Minister must obtain a report of an actuary on the Residential Tenancies Fund.
- (3) The Minister must not make a declaration under this section except in accordance with the recommendations contained in a report under subsection (2).

S. 438(1)
amended by
No. 11/2001
s. 3(Sch.
item 63.1).

- (4) A declaration made under this section—
 - (a) must be made by a notice published in the Government Gazette; and
 - (b) may provide for the payment of amounts in respect of bonds of a specified class or classes calculated at a specified rate and in respect of a specified period.
 - (5) If a declaration has been made under this section, then the amount or amounts determined from time to time in accordance with that declaration in respect of a bond must be added to the bond when it is paid out under Division 3.
 - (6) An amount or amounts to be added to a bond pursuant to subsection (5) must be retained in the Residential Bonds Investment Income Account until paid out under Division 3.
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Pt 11
(Heading)
substituted by
No. 52/1998
s. 238(c).

PART 11—FUNCTIONS OF TRIBUNAL

Pt 11 Div. 1
(Heading and
ss 440–445)
amended by
No. 46/1998
s. 7(Sch. 1),
repealed by
No. 52/1998
s. 238(d).

* * * * *

Division 2—Jurisdiction of Tribunal

446 Jurisdiction of Tribunal

The Tribunal has jurisdiction to hear and determine an application under this Act relating to—

- (a) any matter arising in relation to a tenancy agreement or a proposed tenancy agreement of premises situated in Victoria; and
- (b) any matter arising in relation to a residency right under this Act; and
- (c) any matter referred to it under this Act.

447 Limits of jurisdiction of Tribunal

(1) Subject to subsection (3), the Tribunal must not—

S. 447(1)(a)
repealed by
No. 45/2002
s. 83(1).

* * * * *

- (b) hear and determine an application for a compensation order which involves a monetary claim exceeding \$10 000;

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- (c) make a determination requiring or authorising the payment of an amount that exceeds \$10 000;
 - (d) make a determination requiring or authorising the carrying out of works, the estimated cost of which exceeds \$10 000.
- (1A) Subject to subsection (3), the Tribunal must not hear and determine an application—
- (a) by a landlord or tenant under a tenancy agreement which involves a monetary claim for an amount exceeding \$10 000; or
 - (b) by a rooming house owner or resident in relation to the rooming house provisions, a residency right or an agreement referred to in section 94(2) which involves a monetary claim for an amount exceeding \$10 000; or
 - (c) by a caravan park owner, a caravan owner or a resident in relation to the caravan park provisions, a residency right or an agreement referred to in section 144(1), (2) or (3) which involves a monetary claim for an amount exceeding \$10 000.
- (2) The Tribunal must not make a compensation or compliance order requiring the payment of money as a consequence of death, physical injury or pain and suffering.
- (3) The Tribunal may hear and determine an application or make a determination in respect of a higher amount if the parties to the application or hearing by instrument authorise the Tribunal to do so.
- (4) An authority must be signed by the parties and given to the principal registrar.
- (5) An authority, once given, is irrevocable.

S. 447(1A)
inserted by
No. 45/2002
s. 83(2).

S. 447(4)
amended by
No. 52/1998
s. 238(e).

448 Proceedings of Tribunal not justiciable

- (1) Subject to this section, if an application is made to or proceedings are before the Tribunal, the issue concerned is not justiciable at any time before a court or person acting judicially other than the Supreme Court or the Tribunal except—
 - (a) in proceedings instituted before the application to the Tribunal was made or proceedings commenced; or
 - (b) if the application and proceedings have been withdrawn; or
 - (c) in proceedings for an offence.
- (2) Subsection (1) applies whether the issue is shown in the application or emerges in the course of proceedings.
- (3) The Tribunal must not determine an issue in an application or proceedings if a civil proceeding in respect of the issue was instituted before a court or person acting judicially before the application to or proceedings before the Tribunal unless the civil proceeding has been discontinued.

Pt 11 Div. 3
(Heading)
substituted by
No. 52/1998
s. 238(f).

Division 3—Who may apply to Tribunal?

Ss 449–451
repealed by
No. 52/1998
s. 238(g).

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452 General applications to the Tribunal

- (1) A landlord or a tenant under a tenancy agreement may apply to the Tribunal if—
 - (a) a dispute has arisen under the tenancy agreement; or

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- (b) there has been a breach of the tenancy agreement or of the provisions of this Act relating to the tenancy agreement.
- (2) A rooming house owner or a rooming house resident may apply to the Tribunal if—
- (a) a dispute arises in respect of a residency right or an agreement relating to a residency right; or
- (b) there has been a breach of a duty under the rooming house provisions.
- (3) A caravan park resident or a caravan park owner or a caravan owner may apply to the Tribunal if—
- (a) a dispute arises in respect of a residency right or an agreement relating to a residency right; or
- (b) there has been a breach of a duty under the caravan park provisions.
- (4) A person may apply to the Tribunal in relation to any dispute in respect of any amount paid to a proposed landlord under section 50.
- (5) A person who is not a landlord or tenant under a tenancy agreement may with the leave of the Tribunal apply to the Tribunal in relation to the tenancy agreement.
- (6) A person who is not a caravan park resident or caravan park owner or caravan owner or rooming house resident or rooming house owner may with the leave of the Tribunal apply to the Tribunal in relation to a residency right.
- (7) Leave must not be granted unless the Tribunal is satisfied that the person has an interest and personal involvement in the tenancy agreement or residency right or an agreement relating to the residency right that is sufficient to justify the granting of leave.
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- (8) The provisions of this section are in addition to all other rights and powers under this Act.

Ss 453–471
repealed by
No. 52/1998
s. 238(g).

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Pt 11 Div. 4
(Heading)
amended by
No. 52/1998
s. 238(h).

Division 4—Orders of Tribunal

472 General power of Tribunal to make determinations

S. 472(1)
amended by
Nos 52/1998
s. 238(i),
11/2002
s. 3(Sch. 1
item 56.2).

- (1) The Tribunal, on an application to or in proceedings before it, may make any orders it thinks fit—
- (a) to restrain any action in breach of a tenancy agreement or the provisions of this Act relating to a tenancy agreement;
 - (b) to require any action in the performance of a tenancy agreement or of duties under this Act relating to the tenancy agreement;
 - (c) to restrain any action in breach of the rooming house provisions or caravan park provisions;
 - (d) to require any action in the performance of duties under the rooming house provisions or caravan park provisions;
 - (e) for the return of goods unlawfully taken or removed from—
 - (i) rented premises by a party to the tenancy agreement; or
 - (ii) a room by a rooming house owner or resident; or

- (iii) a caravan or site by a caravan owner, caravan park owner or resident;
- (f) to require the payment of compensation to any person;
- (g) that are ancillary or incidental to any other orders that it makes.

S. 472(1)(g)
amended by
No. 52/1998
s. 238(i).

- (2) The powers of the Tribunal under this section are in addition to all other powers of the Tribunal under this Act.

473 Powers of Tribunal where 2 or more tenancy agreements affect same premises

- (1) If there are 2 or more tenancy agreements in respect of the same premises and the rights of the landlord and tenant under any of the agreements are prejudicially affected by the application of this Act to 2 or more of the agreements, the Tribunal may make any orders it thinks fit—
 - (a) to give effect to the rights under this Act of the tenant in possession under a tenancy agreement; and
 - (b) subject to that first order, to give effect to the rights under this Act of each tenant and each landlord of the premises.

S. 473(1)
amended by
No. 52/1998
s. 238(j)(i).

S. 473(1)(b)
amended by
No. 52/1998
s. 238(j)(ii).

- (2) This section applies only to tenancy agreements to which this Act applies.
- (3) The powers of the Tribunal under this section are in addition to all other powers of the Tribunal under this Act.

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Ss 474–478
repealed by
No. 52/1998
s. 238(k).

S. 479
substituted by
No. 52/1998
s. 239(1).

S. 479(1)(ab)
inserted by
No. 45/2002
s. 84.

479 Review of certain determinations and orders

- (1) This section applies to—
 - (a) a determination made by the Tribunal under section 415;
 - (ab) a determination made by the Tribunal under section 321C;
 - (b) a determination made by the principal registrar under Division 2 of Part 7.
- (2) A person to whom a determination referred to in subsection (1) applies may apply to the Tribunal for review of the determination on the ground that there has been a breach of, or a failure to comply with, this Act.
- (3) The Director of Housing may apply to the Tribunal for review of a determination referred to in subsection (1) that relates to a bond paid on behalf of a tenant or resident by the Director of Housing or an agent of the Director of Housing.
- (4) An application under this section must be made within 14 days after the person is given a copy of the determination.
- (5) If, on an application under this section, the Tribunal is satisfied that there has been a breach of, or a failure to comply with, this Act, the Tribunal may rescind or vary the determination.
- (6) Nothing in Division 3 of Part 3 of the **Victorian Civil and Administrative Tribunal Act 1998** applies to a review under this section.

480 Offence to fail to comply with determination of Tribunal

- (1) A person to whom a determination of the Tribunal under this Act applies must comply with that determination.

Penalty: 10 penalty units and 2 penalty units for each day the non-compliance continues after the time within which the person is required to comply with the determination, up to a maximum of 20 penalty units.

- (2) This section applies—

- (a) despite anything to the contrary in section 133 of the **Victorian Civil and Administrative Tribunal Act 1998**; and
- (b) whether the determination of the Tribunal relates to a monetary order or a non-monetary order within the meaning of the **Victorian Civil and Administrative Tribunal Act 1998**.

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S. 480 repealed by No. 52/1998 s. 238(k), new s. 480 inserted by No. 45/2002 s. 85.

Pt 11 Div. 5 (Heading and ss 481–484) amended by No. 46/1998 s. 7(Sch. 1), repealed by No. 52/1998 s. 238(k).

Division 6—Rent Special Account

485 Rent Special Account

- (1) The principal registrar must establish a trust account to be called the "Rent Special Account".

S. 485(1) amended by No. 52/1998 s. 238(l)(i).

Residential Tenancies Act 1997
No. 109 of 1997
Part 11—Functions of Tribunal

s. 485

S. 485(2)
amended by
No. 52/1998
s. 238(l)(ii).

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- (2) There must be paid into the Rent Special Account all money paid under an order of the Tribunal authorising the payment of rent or hiring charges into that Account.
 - (3) Money in the Rent Special Account may be paid out only in accordance with section 77, 134 or 193.
 - (4) There must be paid into the Residential Tenancies Fund any amount of interest received on the investment of the Rent Special Account.

S. 485(5)
amended by
Nos 52/1998
s. 238(l)(iii),
11/2001
s. 3(Sch.
item 63.2).

- (5) The principal registrar must open and maintain accounts at an authorised deposit-taking institution or institutions within the meaning of the Banking Act 1959 of the Commonwealth in the State for the purposes of the Rent Special Account.
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PART 12—ADMINISTRATION

Division 1—Director of Consumer Affairs Victoria

Pt 12 Div. 1
(Heading)
substituted by
Nos 17/1999
s. 41(2),
35/2000
s. 50(a),
amended by
No. 30/2003
s. 91.

486 Functions of Director

The functions of the Director under this Act are—

(a) to investigate—

(i) any matter referred to him or her by the Tribunal or the principal registrar;

S. 486(a)(i)
amended by
No. 45/2002
s. 96(b).

(ii) any application made to the Director under Part 2, 3 or 4 in relation to excessive rent or hiring charges;

(iii) any complaint made by a tenant under a tenancy agreement that the landlord is in breach of a duty to maintain the rented premises in good repair;

(b) to investigate, if the Director considers it appropriate to do so—

(i) any other dispute in relation to a tenancy agreement between a landlord and a tenant that is referred by the landlord or the tenant;

(ii) on the written application of a resident or a rooming house owner, any matter arising under the rooming house provisions;

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- (iii) on the written application of a resident, caravan park owner or caravan owner any matter arising under the caravan park provisions;
 - (c) to report on an investigation under paragraph (a) or (b) to the person who referred the matter or dispute or made the application or complaint;
 - (d) to conciliate settlements of complaints or disputes referred to him or her under paragraph (a)(iii) or (b);
 - (e) to undertake programs for the dissemination (in English or in any other language) of information to educate or inform the public in relation to the provisions of this Act and the services provided under this Act by the Director;
 - (f) to publish standard form tenancy agreements;
 - (g) to conduct research into matters relating to tenancy agreements, rooming houses and caravan parks and to disseminate that research;
 - (h) to liaise, co-operate and exchange information with, and to provide financial assistance from the Residential Tenancies Fund to government departments, public statutory authorities and other persons engaged in—
 - (i) the provision of information in relation to the provisions of this Act;
 - (ii) educating or informing the public in relation to this Act and the services provided under this Act;
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- (iii) conducting research into matters relating to tenancy agreements, rooming houses or caravan parks or publishing the results of that research;
 - (i) any other functions conferred on the Director by or under this Act.

487 Powers of Director

The Director has the power to do anything that is necessary or convenient to be done for or in connection with the performance of the Director's functions under this Act.

488 Director subject to Minister's general direction and control

The Director is subject to the general direction and control of the Minister in carrying out his or her powers and functions under this Act.

489 Delegation by Director

The Director may, by instrument, delegate to any officer or employee in the public service or of a public statutory authority any of the Director's powers or functions under this Act, except this power of delegation.

490 Reports of Director

- (1) The Director is not required to make a report on an investigation into a matter or a dispute referred to in section 486(b) if the Director is of the opinion that the matter or dispute is frivolous or vexatious and does not justify the making of a report.
- (2) A report of the Director under this Act need not be in writing, except where expressly required by this Act.

Division 2—Residential Tenancies Fund

491 Establishment of Residential Tenancies Fund

There shall be kept in the Trust Fund under the **Financial Management Act 1994** an account to be called the "Residential Tenancies Fund".

492 Payments into the Residential Tenancies Fund

There must be paid into the Residential Tenancies Fund—

- (a) all money required or authorised by or under this Act or any other Act to be paid into the Residential Tenancies Fund; and
- (b) all penalties paid or recovered under this Act; and
- (c) all fees paid under this Act; and
- (d) any gift, donation or bequest of money to the Residential Tenancies Fund.

493 Payments out of Residential Tenancies Fund

There must be paid out of the Residential Tenancies Fund at the direction of the Director—

- (a) any money authorised by or under this Act to be paid out of the Residential Tenancies Fund; and
- (b) the costs of administration of this Act, other than Part 10.

494 Treasurer's powers and duties in relation to Residential Tenancies Fund

The Treasurer—

- (a) may from time to time invest money in the Residential Tenancies Fund in any manner the Treasurer thinks fit; and
- (b) must pay into the Residential Tenancies Fund any interest received on the money so invested.

495 Director may authorise payments for research etc.

The Director may authorise payment from the Residential Tenancies Fund of financial assistance to government departments, public statutory authorities and other persons engaged in—

- (a) the provision of information in relation to the provisions of this Act;
- (b) educating or informing the public in relation to this Act and the services provided under this Act;
- (c) conducting research into matters relating to tenancy agreements, rooming houses or caravan parks or publishing the results of that research.

496 Loans to tenants and residents from Residential Tenancies Fund

- (1) A tenant under a proposed tenancy agreement may apply to the Director for financial assistance for the payment of all or part of the bond or the first payment of rent under the tenancy agreement.
- (2) A person who proposes to be a resident of a rooming house may apply to the Director for financial assistance for the payment of all or part of the bond or the first payment of rent in respect of the residency.

- (3) A person who proposes to be a resident of a caravan park may apply to the Director for financial assistance for the payment of all or part of the bond or the first payment of rent in respect of the residency.
- (4) An application must be in writing.
- (5) The Director may authorise the making of a loan out of the Residential Tenancies Fund to the applicant of an amount not exceeding the sum of the bond and the first payment of rent if the Director is satisfied that the applicant would not without financial assistance be able to pay all or part of that bond or first payment of rent.
- (6) A loan under this section is subject to any conditions the Director thinks fit including—
 - (a) a condition for repayment of the loan to the Residential Tenancies Fund with or without interest; and
 - (b) a condition that the amount of the loan be paid by the Director on the applicant's behalf to the landlord, rooming house owner or caravan park owner.

497 Loans to landlords etc. from Residential Tenancies Fund

- (1) A landlord under a tenancy agreement may apply to the Director for financial assistance for the payment of the cost of urgent repairs to the rented premises.
- (2) A rooming house owner may apply to the Director for financial assistance for the payment of the cost of urgent repairs to a room in the rooming house.
- (3) A caravan park owner may apply to the Director for financial assistance for the payment of the cost of urgent repairs to a caravan.

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- (4) An application must be in writing.
 - (5) If the Director is satisfied that the applicant would not without financial assistance be able to pay the cost of the urgent repairs, the Director may authorise the making of a loan out of the Residential Tenancies Fund to the applicant of an amount not exceeding—
 - (a) the amount of rent payable in the preceding period of 2 months under the tenancy agreement; or
 - (b) the amount of rent payable in the preceding period of 2 months for the room; or
 - (c) the amount of hiring charges payable in the preceding period of 2 months for the caravan.
 - (6) A loan under this section is subject to any conditions the Director thinks fit including a condition for repayment of the loan to the Residential Tenancies Fund with or without interest.

498 Recovery of loan money

If any money owing under a loan under this Part is not paid when it becomes due and payable in accordance with the terms and conditions of the loan—

- (a) the Director may recover that money in any court of competent jurisdiction as a debt due to the Crown; and
- (b) any money so recovered by the Director must be paid into the Residential Tenancies Fund.

s. 498A

S. 498A
inserted by
No. 52/1998
s. 239(2).

498A Director may authorise payment for certain legal costs

If—

- (a) the Tribunal refers a question of law in a proceeding under this Act to the Trial Division of the Supreme Court or the Court of Appeal under section 96 of the **Victorian Civil and Administrative Tribunal Act 1998**; and
- (b) the Director considers that the question is of general public importance—

the Director may authorise payment of some or all of the costs of the referral out of the Residential Tenancies Fund.

PART 13—GENERAL

Division 1—Offences

499 Confidentiality

- (1) In this section, *relevant person* means a person who is or has been—

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S. 499(1)
(a)–(c)
repealed by
No. 52/1998
s. 240(a)(i).

- (d) the Director; or

- (e) a person employed under Part 3 of the **Public Administration Act 2004** in the administration of this Act; or

S. 499(1)(e)
substituted by
No. 35/2000
s. 50(b),
amended by
No. 108/2004
s. 117(1)
(Sch. 3
item 174).

- (f) a person to whom the Director had delegated a function or power under this Act.

- (2) Subject to subsection (3), a relevant person must not, either directly or indirectly, make a record of or divulge or communicate to any person, information concerning the affairs of a person, being information acquired by the relevant person by reason of his or her office or employment under or for the purposes of this Act.

Penalty: 20 penalty units.

s. 499

- (3) Nothing in subsection (2) precludes a person from—
- (a) making a record of or divulging or communicating information—
 - (i) in the performance of a function or the exercise of a power under this or any other Act; or
 - (ii) with the written authority of the Minister; or
 - (iii) with the written authority of the person to whom the information relates; or
 - (b) producing a document to a court in the course of criminal proceedings or in the course of any proceedings under this or any other Act; or
 - (c) divulging or communicating to a court in the course of any proceedings referred to in paragraph (b) any matter or thing coming under his or her notice in the performance of a function or the exercise of a power referred to in paragraph (a); or
 - (d) providing non-identifying information for statistical purposes only to any person approved by the Minister.

S. 499(3)(a)(i)
amended by
No. 45/2002
s. 97.

S. 499(4)
repealed by
No. 52/1998
s. 240(a)(ii).

S. 500
repealed by
No. 103/2004
s. 62.

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501 Offence to make false representation—tenancy agreement or residency right

A person must not make, in relation to a tenancy agreement, a proposed tenancy agreement or a residency right, a false and fraudulent misrepresentation as to—

- (a) a provision of this Act; or
- (b) a term included or to be included in the tenancy agreement; or
- (c) a matter affecting a person's rights or duties under this Act or a tenancy agreement or proposed tenancy agreement.

Penalty: 10 penalty units.

502 Offence to persuade person not to exercise rights or take proceedings

A person must not, in relation to a tenancy agreement, a proposed tenancy agreement or a residency right, by threat or intimidation persuade or attempt to persuade—

- (a) a party to the tenancy agreement or proposed tenancy agreement; or
- (b) a resident; or
- (c) a rooming house owner; or
- (d) a caravan owner or a caravan park owner—

not to exercise his or her rights to take or continue proceedings under this Act.

Penalty: 20 penalty units.

503 Offence to aid, abet, counsel or procure commission of offence

A person must not in relation to a tenancy agreement, a proposed tenancy agreement or a residency right, aid, abet, counsel or procure the commission of an offence against this Act.

Penalty: 20 penalty units.

S. 504
amended by
No. 52/1998
s. 240(b).

504 Offence to give false information

A person must not knowingly make a false or misleading statement or provide false or misleading information to the Authority or the Director under this Act.

Penalty: 10 penalty units.

505 Certain penalties prohibited

(1) A person must not demand or accept from a tenant under a tenancy agreement who has failed to comply with the tenancy agreement or with any of the provisions of this Act relating to the tenancy agreement the payment by reason of the failure of any amount other than—

- (a) subject to this Act, rent under the tenancy agreement; or
- (b) an amount or penalty provided for in this Act.

Penalty: 20 penalty units.

(2) A rooming house owner must not demand or accept from a resident who has failed to comply with the rooming house provisions the payment by reason of that failure of any amount other than—

- (a) rent in accordance with this Act; or
- (b) any other payment provided for in this Act.

Penalty: 20 penalty units.

- (3) A caravan park owner or a caravan owner must not demand or accept from a resident of a site or caravan who has failed to comply with the caravan park provisions the payment by reason of that failure of any amount other than—
- (a) rent or a hiring charge in accordance with this Act; or
 - (b) any other payment provided for in this Act.

S. 505(3)
inserted by
No. 45/2002
s. 58.

Penalty: 20 penalty units.

Division 2—Evidence and legal proceedings

506 Service of documents

- (1) Subject to this section, a notice or other document to be served on or given to a person under this Act must be served or given—
- (a) by delivering it personally to the person; or
 - (b) by leaving it at the person's usual or last known place of residence or business with a person apparently over the age of 16 years and apparently residing or employed at that place; or
 - (c) by sending it to the person by post addressed to the person's usual or last known place of residence or business; or
 - (d) if the person is a corporation—
 - (i) by sending it by post to the registered office in Victoria of the corporation; or
 - (ii) by giving it to a person who is an officer of the corporation who is authorised to accept service of notices and who is employed at the registered office of the corporation; or
 - (e) in the manner ordered by the Tribunal.

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- (2) In the case of a notice or other document to be served on or given to a landlord, in addition to the methods set out in subsection (1), a notice or document may be served or given—
- (a) by delivering it to the landlord or to the landlord's agent or to the person who usually collects the rent; or
 - (b) by sending it by post addressed—
 - (i) to the landlord at the landlord's address for service of documents; or
 - (ii) to the landlord's agent at the agent's usual place of business; or
 - (c) by giving it to a person employed in the office of the landlord's agent.
- (3) A notice to vacate given under Part 6 must be given—
- (a) by delivering it personally to the tenant or resident; or
 - (b) by sending the notice by registered post addressed to the tenant or resident at the rented premises, room or site; or
 - (c) in the manner ordered by the Tribunal.

Note to
s. 506(3)
inserted by
No. 45/2002
s. 98.

Note

The **Electronic Transactions (Victoria) Act 2000** provides for the service of documents by electronic communication in accordance with that Act.

507 Onus of proof that Act does not apply

If, in any proceedings, a person claims that this Act, or a provision of this Act, does not apply in relation to the subject-matter of the proceedings, the onus of proving that this Act or that provision does not so apply lies on that person.

507A Application of provisions of Fair Trading Act 1999

- (1) Part 10 of the **Fair Trading Act 1999** (except section 121) extends and applies (with any necessary modifications) to this Act (except Part 14) as if—
- (a) any reference in that Part 10 to the **Fair Trading Act 1999** were a reference to this Act; and
 - (b) to the extent that section 134 of the **Fair Trading Act 1999** relates to the giving of information or the production of a document under section 118 of that Act, the penalty for an offence against that section 134 did not exceed 10 penalty units.
- (2) Sections 106HA, 143 and 144 and Division 2 of Part 11 (except section 155) of the **Fair Trading Act 1999** extend and apply (with any necessary modifications) to this Act (except Part 14) as if any reference in those provisions to the **Fair Trading Act 1999** were a reference to this Act (except Part 14).
- (2A) For the purposes of subsection (2), section 153 of the **Fair Trading Act 1999** applies as if a reference in that section to Part 2, 2A, 2B, 3, 4, 5 or 6 of the **Fair Trading Act 1999** were a reference to this Act.
- (3) For the purposes of subsection (2), section 154 of the **Fair Trading Act 1999** applies as if a reference to prescribed proceedings were a reference to—
- (a) proceedings for an offence against a provision of this Act (except Part 14 and an offence applied by subsection (1)); or

S. 507A inserted by No. 17/1999 s. 42, amended by No. 103/2004 s. 63 (ILA s. 39B(1)).

S. 507A(2) inserted by No. 103/2004 s. 63, amended by No. 17/2007 s. 36(Sch. item 12.1).

S. 507A(2A) inserted by No. 17/2007 s. 36(Sch. item 12.2).

S. 507A(3) inserted by No. 103/2004 s. 63.

s. 508

S. 507A(3)(b)
amended by
No. 17/2007
s. 36(Sch.
item 12.3).

- (b) proceedings on an application for an injunction under section 149, 149A, 150, 151A or 151B of the **Fair Trading Act 1999** (as applied by subsection (2)) against a person alleged to have contravened a provision of this Act (except Part 14 and an offence applied by subsection (1)); or
- (c) proceedings on an application for an order under section 158, or for damages under section 159, of the **Fair Trading Act 1999** (as applied by subsection (2)).

508 Proceedings for offences

S. 508(1)
amended by
No. 35/2000
s. 50(c),
substituted by
No. 103/2004
s. 64.

- (1) Proceedings for an offence against this Act may only be brought by—
 - (a) the Director; or
 - (b) a person authorised by the Director for the purposes of this section; or
 - (c) a member of the police force.

S. 508(1A)
inserted by
No. 103/2004
s. 64.

- (1A) Subsection (1) does not apply to proceedings for an indictable offence or proceedings under Part 14.
- (2) In proceedings for an offence against this Act it must be presumed, in the absence of evidence to the contrary, that the person bringing the proceedings was authorised to bring the proceedings.

S. 508A
inserted by
No. 45/2002
s. 99.

508A Extended period to prosecute certain offences

Despite section 26 of the **Magistrates' Court Act 1989**, proceedings for the following offences may be commenced within the period of 3 years after the commission of the alleged offence—

- (a) an offence against section 31(1), 96 or 147;
- (b) an offence against section 35(1), 97(1) or 148(1);

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- (c) an offence against section 37(1);
 - (d) an offence against section 66(1), 124 or 182;
 - (e) an offence against section 146(3);
 - (f) an offence against section 183(1);
 - (g) an offence against section 405(1) or (4);
 - (h) an offence against section 406.

509 Jurisdiction of Supreme Court, County Court and Magistrates' Court

- (1) The Supreme Court has jurisdiction to hear and determine applications made under section 510.
- (2) Subject to section 37 of the **County Court Act 1958**, the County Court has jurisdiction to hear and determine applications made under section 510.
- (3) Subject to the **Magistrates' Court Act 1989**, the Magistrates' Court has jurisdiction to hear and determine applications made under section 510.

510 Application to Supreme Court, County Court or Magistrates' Court

- (1) A person may make an application under this section to a court referred to in section 509 in relation to any matter arising in relation to—
 - (a) a tenancy agreement of premises situated in Victoria; or
 - (b) a right or duty created under this Act in relation to a rooming house; or
 - (c) a right or duty created under this Act in relation to a caravan park—

being an application that, if made to the Tribunal, the Tribunal would, but for section 447, have been entitled to hear and determine.

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- (2) In addition to its existing powers, the court to which application is made under this section has, in hearing and determining the application, the same powers as the Tribunal would have had if the application had been heard and determined by it.
 - (3) Nothing in section 447 limits the power of a court to hear and determine an application under this section.
 - (4) If a person makes an application to the Supreme Court, being an application that, if made to the Tribunal, the Tribunal would have been entitled to hear and determine, the person is not entitled to any costs in the proceedings unless the Supreme Court is satisfied that, at the time of making the application, there were reasonable grounds for believing that the Tribunal would not have been entitled to hear and determine the application.

S. 510A
inserted by
No. 52/1998
s. 241.

510A Parties to Tribunal proceedings

In addition to any other parties, the following are parties to a proceeding in the Tribunal under this Act—

- (a) a person in relation to whom the application in the proceeding is made;
- (b) a person whose alleged act or omission forms the basis of the application in the proceeding;
- (c) a person against whom an order is sought in the proceeding.

Division 2A—Infringement Notices

Pt 13 Div. 2A
(Heading and
ss 510B–
510J)
inserted by
No. 103/2004
s. 65.

510B Definitions

S. 510B
inserted by
No. 103/2004
s. 65.

In this Division—

authorised officer means—

- (a) an inspector appointed under the **Fair Trading Act 1999**;
- (b) a member of the police force;
- (c) a person authorised in writing by the Director.

510C Power to serve a notice

S. 510C
inserted by
No. 103/2004
s. 65.

- (1) An authorised officer may serve an infringement notice on any person that he or she has reason to believe has committed an offence against a provision of this Act specified in Schedule 2.
- (2) An offence referred to in subsection (1) for which an infringement notice may be served is an infringement offence within the meaning of the **Infringements Act 2006** and the penalty for that offence is the prescribed infringement penalty in respect of that offence.

S. 510C(2)
substituted by
No. 32/2006
s. 94(Sch.
item 42(1)).

510D Form of notice

For the purposes of section 510C, an infringement notice must be in the form required by the **Infringements Act 2006** and may contain any additional information approved by the Director.

S. 510D
inserted by
No. 103/2004
s. 65,
substituted by
No. 32/2006
s. 94(Sch.
item 42(2)).

s. 511

Ss 510E–510J
inserted by
No. 103/2004
s. 65,
repealed by
No. 32/2006
s. 94(Sch.
item 42(3)).

* * * * *

Division 3—Regulations

511 Regulations

(1) The Governor in Council may make regulations
for or with respect to—

S. 511(1)
(a)–(c)
repealed by
No. 52/1998
s. 242(a)(i).

* * * * *

S. 511(1)(d)
amended by
No. 52/1998
s. 242(a)(ii).

(d) the manner of lodgment of documents with
the Authority or the Director (including
electronic lodgment and lodgment by
facsimile);

S. 511(1)(e)
repealed by
No. 52/1998
s. 242(a)(iii).

* * * * *

- (f) prescribing a standard form of tenancy agreement;
- (g) prescribing forms and information to be used for the purposes of this Act;
- (h) prescribing penalties not exceeding 10 penalty units for a breach of the regulations;
- (i) generally prescribing any matter or thing required or authorised to be prescribed by this Act.

Residential Tenancies Act 1997
No. 109 of 1997
Part 13—General

s. 511

* * * * *

**S. 511(2)
repealed by
No. 52/1998
s. 242(b).**

(3) Regulations under this Act (except under Part 14)
may—

- (a) be of general or limited application;
- (b) differ according to differences in time, place
or circumstance;
- (c) leave any matter or thing to be from time to
time determined or approved by the Director
or the Authority.

**S. 511(3)
amended by
No. 52/1998
s. 242(c).**

**PART 14—REGULATION OF CARAVAN PARKS AND
MOVABLE DWELLINGS**

Division 1—Application

512 Application of this Part

This Part does not apply to—

- (a) a caravan park that operates for a limited period to house seasonal agricultural workers or workers engaged in short-term construction jobs; or
- (b) a caravan park that operates for a limited period in conjunction with a festival or other similar event; or
- (c) a caravan park exempted by the Minister under section 513.

513 Minister may exempt caravan park from compliance with this Part

The Minister may—

- (a) exempt a caravan park from compliance with this Part; and
- (b) revoke that exemption.

Division 2—Regulation of caravan parks and movable dwellings

514 Standards regulations

The Governor in Council may make regulations for or with respect to all or any of the following matters—

- (a) standards of development in relation to land used or developed or intended to be used or developed for the placement of movable dwellings;

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- (b) standards for facilities and services in caravan parks;
 - (c) standards of design, construction, installation and maintenance of movable dwellings;
 - (d) necessary and optional features, apparatus or accessories for movable dwellings;
 - (e) health and safety standards for caravan parks with which both occupiers and owners must comply;
 - (f) any other matters relating to the regulation of standards in respect of movable dwellings and caravan parks that are necessary to give effect to this Part.

515 Registration regulations

The Governor in Council may make regulations for or with respect to all or any of the following matters—

- (a) the registration of caravan parks and prescribing terms and conditions to which registration is subject;
- (b) the grounds on which registration may be granted or issued, transferred or renewed;
- (c) appropriate forms for applications for registration, transfer or renewal of registration;
- (d) information to be provided in applications for registration, transfer or renewal of registration;
- (e) fees for registration, transfer or renewal of registration of caravan parks including—
 - (i) specific fees;
 - (ii) maximum or minimum fees;

- (iii) maximum and minimum fees;
- (iv) scales of fees proportionate with the period of registration;
- (v) the payment of fees either generally or under specified conditions or in specified circumstances;
- (f) any other matters relating to the registration of caravan parks that are necessary to give effect to this Part.

516 Additional powers

Regulations under this Part may—

- (a) provide exemptions from the regulations for a class or type of person, caravan park, movable dwelling or works;
- (b) prescribe a penalty not exceeding 10 penalty units for a contravention of any regulation;
- (c) apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any authority or body whether—
 - (i) wholly or partially or as amended by the regulations; or
 - (ii) as formulated, issued, prescribed or published from time to time or at the time the regulations are made or at any time before then;
- (d) be of a general or limited application;
- (e) differ according to differences in time, place or circumstance;
- (f) leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by the Minister or any government

department, municipal council or public authority or any officer of that department, council or authority.

Division 3—Application of building and planning laws

517 Building provisions

The **Building Act 1993**, except Part 12A, does not apply to movable dwellings situated in a caravan park but does apply to buildings situated in a caravan park that are not movable dwellings.

S. 517
amended by
No. 28/2000
s. 22.

518 Planning provisions

A planning scheme or permit under the **Planning and Environment Act 1987** whether made before or after the commencement of this section cannot limit the duration of residency in a caravan park.

Division 4—Applications and appeals

519 Application by caravan park owner for exemption

- (1) A caravan park owner may apply to the Building Appeals Board for an exemption from, or a variation of, a regulation under this Part applying to the owner and the caravan park.
- (2) Subsection (1) applies regardless of when the caravan park commenced operating.
- (3) If the Building Appeals Board is satisfied that in the particular circumstances the regulation is inappropriate or might reasonably be varied without detriment to the public interest, the Board may grant the exemption or determine that the regulation applies with any variations it thinks fit.
- (4) An exemption or variation ceases to apply to part of a caravan park on that part being substantially extended or re-developed.

520 Referral of disputes by caravan park owners

If any doubt, difference or dissatisfaction in respect of any matter provided for in this Part or in the regulations under this Part arises between a municipal council and a caravan park owner, the caravan park owner may apply to have the matter determined by the Building Appeals Board.

521 Appeals

A caravan owner or resident may appeal to the Building Appeals Board against a decision of a municipal council in relation to—

- (a) the application of the regulations under this Part to caravan park owners, caravan owners, residents and occupiers; or
- (b) the application of an exemption from the regulations under this Part of caravan park owners, caravan owners, residents and occupiers.

Division 5—Enforcement

522 Compliance notice

- (1) The Minister or a municipal council may give a compliance notice to a person who in the opinion of the Minister or council has contravened this Part or a regulation under this Part.
- (2) A compliance notice must require the person to whom it is given to rectify the matter within the time specified in the compliance notice.
- (3) A person must comply with a compliance notice.

Penalty: 50 penalty units and, in the case of a continuing offence, a daily penalty of not more than 10 penalty units for each day the offence continues after conviction.

523 Closure order

(1) The Minister may make a closure order under this section if the Minister is satisfied that a caravan park owner has—

- (a) committed an offence against this Act or the regulations under this Act which is a continuing offence or is in the Minister's opinion of a serious nature; or
- (b) failed to comply with an order of the Tribunal.

S. 523(1)(b)
substituted by
No. 52/1998
s. 242(d).

(2) A closure order may direct that until this Act or the regulation or the order of the Tribunal is complied with—

S. 523(2)
amended by
No. 52/1998
s. 242(e).

- (a) the caravan park is to be closed; and
- (b) the caravan park owner must not—
 - (i) admit new occupiers to the park; or
 - (ii) collect rents or hiring charges from existing residents or similar fees from other existing occupiers.

(3) A caravan park owner must comply with a closure order.

Penalty: 50 penalty units and, in the case of a continuing offence, a daily penalty of not more than 10 penalty units for each day on which the offence continues after conviction.

524 Delegations

(1) The Minister may, by instrument, delegate to any person any of his or her powers, duties or functions under this Part, except this power of delegation.

- (2) A municipal council may, by instrument, delegate to an officer of, or the holder of an office in, the council any of its powers, duties or functions under this Part and the regulations under this Part, except this power of delegation.

525 Authorised persons

S. 525(1)
amended by
No. 46/1998
s. 7(Sch. 1).

- (1) The Secretary to the Department of Infrastructure may authorise any employee in the public service to exercise the powers set out in section 526, either generally or in a particular case.
- (2) A municipal council may authorise any of its officers to exercise the powers set out in section 526, either generally or in a particular case.
- (3) The Secretary to the Department of Infrastructure must issue an identity card to each person authorised by the Secretary under this section.
- (4) A municipal council must issue an identity card to each person authorised by the municipal council under this section.
- (5) An identity card must—
- (a) contain a photograph of the authorised person; and
 - (b) contain the signature of the authorised person; and
 - (c) if the identity card is issued by the Secretary, be signed by the Secretary; and
 - (d) if the identity card is issued by a municipal council, be signed by a member of staff of the municipal council appointed for the purpose.

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- (6) An authorised person must—
- (a) carry an identity card whenever the authorised person is exercising his or her powers under section 526; and
 - (b) show the identity card on being requested to do so.

Penalty: 1 penalty unit.

526 Powers of entry and inspection

- (1) An authorised person may enter any building or land at any reasonable time for the purpose of making any inspection or test to determine whether or not this Part and the regulations under this Part are being complied with.
- (2) An authorised person may not, under this section, enter a residence unless the occupier of the residence has consented in writing to the entry.
- (3) An authorised person may not, under this section, enter any other building or land—
 - (a) unless the occupier of the building or land has consented in writing to the entry; or
 - (b) in the absence of that consent, unless 2 days clear notice is given to the occupier (if any).
- (4) If an authorised person exercises a power of entry under this section without the owner or occupier being present, the authorised person must, on leaving the building or land, leave a notice setting out—
 - (a) the time of entry; and
 - (b) the purpose of entry; and
 - (c) a description of all things done while on the land or in the building; and

- (d) the time of departure; and
 - (e) the procedure for contacting the authorised person for further details of the entry.
- (5) If an authorised person exercises a power of entry under this section, the Secretary to the Department of Infrastructure or municipal council (as the case requires) must keep a record of that entry.

527 Proceedings for offences against this Part or the regulations

- (1) The Minister or a municipal council may authorise a person either generally or in a particular case to institute proceedings for offences against this Part or the regulations under this Part.
- (2) In proceedings for offences against this Part or the regulations under this Part, proof is not required until evidence is given to the contrary of—
 - (a) the authority of a person to institute the proceedings;
 - (b) the issue, transfer or renewal of a caravan park registration;
 - (c) the giving or making of any order, notice, decision or direction.

PART 15—TRANSITIONAL PROVISIONS

Pt 15
(Heading)
substituted by
No. 63/2005
s. 30.

528 Definition of 2005 Act

S. 528
substituted by
No. 63/2005
s. 31.

In this Part *2005 Act* means the **Residential Tenancies (Further Amendment) Act 2005**.

529 Number of occupants of room frozen at Royal Assent

S. 529
substituted by
No. 63/2005
s. 31.

If a room in a rooming house is occupied by one or more residents at the date of commencement of section 31 of the 2005 Act, the rooming house owner must not, before the date of commencement of section 9 of the 2005 Act, increase the number of persons who occupy the room.

Penalty: 10 penalty units.

530 Rights of existing residents

S. 530
substituted by
No. 63/2005
s. 31.

- (1) If a room in a rooming house has more than one resident at the date of commencement of section 31 of the 2005 Act—
 - (a) each of those residents is deemed to have a shared room right in respect of that room; and
 - (b) a resident (the *new resident*) who, before the date of commencement of section 9 of the 2005 Act, takes the place of a resident in that room is deemed to have a shared room right in respect of that room if there is an existing resident with a shared room right occupying that room when the new resident takes up occupation.

Example

J and K share a room in a rooming house at the date of commencement of section 31 of the 2005 Act. The rooming house owner had chosen separately each person who was to occupy the room. J and K each have a shared room right. If K moves out and L takes up occupancy of the room before the date of commencement of section 9 of the 2005 Act, J and L each have a shared room right.

- (2) Subsection (1) does not apply to 2 or more residents who have exclusive occupancy of a room in a rooming house at the date of commencement of section 31 of the 2005 Act.

Example

L and M are domestic partners. They are the sole occupants of the room at the date of commencement of section 31 of the 2005 Act. They had agreed with the rooming house owner before that date that they should have exclusive occupancy of the room. L and M each have an exclusive occupancy right.

- (3) Except as provided by subsection (1), a resident of a rooming house on the date of commencement of section 31 of the 2005 Act is deemed to have an exclusive occupancy right in respect of that room.

S. 531
substituted by
No. 63/2005
s. 31.

531 Notice to existing residents

- (1) A rooming house owner must within 14 days after the date of commencement of section 9 of the 2005 Act give to each resident of the rooming house who under section 530 is deemed to have a shared room right a notice in accordance with subsection (2).

Penalty: 5 penalty units.

- (2) The notice must—
- (a) be in writing in a form approved by the Director; and
 - (b) state the date on which it is given; and
 - (c) state that it is given in accordance with this section; and

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- (d) specify that the residency right of the resident is a shared room right; and
 - (e) specify the total number of people who, in accordance with section 529, could be accommodated in the room at the date of commencement of section 9 of the 2005 Act; and
 - (f) state that the room capacity of the room set out in paragraph (e) cannot be increased without the consent of the resident in accordance with section 94D of the Act; and
 - (g) state that if there is any vacancy in the room capacity set out in paragraph (e)—
 - (i) the resident will not be notified before another resident takes up occupancy of the room; and
 - (ii) the rooming house owner will choose the other residents who will be permitted to take up occupancy of the room; and
 - (h) specify the rent payable by the resident for the shared room right and the rent that would have been payable by the resident if the right had been an exclusive occupancy right.
- (3) A rooming house owner is not required to give a notice to a resident under this section if the rooming house owner gives a notice under section 94B to the resident within 14 days after the date of commencement of section 9 of the 2005 Act.

532 Transitional provisions

Schedule 1 has effect.

Residential Tenancies Act 1997
No. 109 of 1997
Part 15—Transitional Provisions

s. 533

S. 533
repealed by
No. 103/2004
s. 66.

* * * * *

SCHEDULES

SCHEDULE 1

Sch. 1
amended by
No. 45/2002
s. 100.

TRANSITIONAL PROVISIONS

Division 1—General transitional provisions

1 General transitional provisions

- (1) Unless the contrary intention appears in this Act, all persons, things and circumstances appointed or created by or under the **Residential Tenancies Act 1980**, the **Rooming Houses Act 1990** or the **Caravan Parks and Movable Dwellings Act 1988**, or existing or continuing under any of those Acts immediately before the commencement of this clause continue, under and subject to this Act, to have the same status, operation and effect as they respectively would have had if this Act had not been enacted.
- (2) This Schedule does not affect or take away from the **Interpretation of Legislation Act 1984**.
- (3) This Schedule applies despite anything to the contrary in any other provision of this Act.

2 Superseded references

On the commencement of this clause, in any Act (other than this Act) or in any instrument made under any Act or in any document of any kind—

- (a) a reference to the **Residential Tenancies Act 1980** is deemed to be a reference to the **Residential Tenancies Act 1997**; and
- (b) a reference to the **Rooming Houses Act 1990** is deemed to be a reference to the **Residential Tenancies Act 1997**; and

- (c) a reference to the **Caravan Parks and Movable Dwellings Act 1988** is deemed to be a reference to the **Residential Tenancies Act 1997**.

3 Residential Tenancies Tribunal

The Residential Tenancies Tribunal established under this Act deemed to be the same body as the Residential Tenancies Tribunal established under the **Residential Tenancies Act 1980**.

4 Registrar

The person who held the position of Registrar of the Residential Tenancies Tribunal immediately before the commencement of this clause is deemed on that commencement to be appointed as the Registrar of the Residential Tenancies Tribunal under this Act.

5 Residential Tenancies Fund

Subject to clause 6, the Residential Tenancies Fund established under this Act is deemed to be the same fund as the Residential Tenancies Fund established under the **Residential Tenancies Act 1980**.

6 Rent Special Account

On the commencement of this clause—

- (a) all money standing to the credit of the Rent Special Account under the **Residential Tenancies Act 1980** shall form part of and be paid into the Rent Special Account established under this Act; and
- (b) the Rent Special Account established under this Act is deemed to be the same account as the Rent Special Account under the **Residential Tenancies Act 1980**.

7 Breach of duty notice

- (1) A notice given under section 105 of the **Residential Tenancies Act 1980** in respect of a breach of a provision of Division 2 or 3 of Part IV of that Act is deemed to be a breach of duty notice given under Part 5 of this Act in respect of a breach of a corresponding provision of this Act.
- (2) A notice given under section 120 of the **Residential Tenancies Act 1980** in respect of a breach of a provision of Division 2, 3 or 4 of Part IV of that Act is deemed to be a breach of duty notice given under Part 5 of this Act in respect of a breach of a corresponding provision of this Act.
- (3) A breach of duty notice given under section 40 of the **Rooming Houses Act 1990** in respect of a breach of a duty under Division 1 of Part 3 of that Act is deemed to be a breach of duty notice given under Part 5 of this Act in respect of a breach of a corresponding duty under this Act.
- (4) A breach of duty notice given under section 47 of the **Caravan Parks and Movable Dwellings Act 1988** in respect of a breach of a duty under Division 1 of Part 3 of that Act is deemed to be a breach of duty notice given under Part 5 of this Act in respect of a breach of a corresponding duty under this Act.

Division 2—Bonds

8 Bonds

- (1) Sections 65, 66, 67, 68, 69, 77, 78 and 79 of the **Residential Tenancies Act 1980** as in force immediately before the commencement of this clause continue to apply in relation to a security deposit paid under a tenancy agreement under that Act before that commencement until the amount

of the security deposit is lodged with the Authority under this section.

- (2) Sections 14(5) and 15 of the **Rooming Houses Act 1990** as in force immediately before the commencement of this clause continue to apply in relation to a bond paid under that Act before that commencement until the amount of the bond is lodged with the Authority under this section.
 - (3) Sections 14(5) and 15 of the **Caravan Parks and Movable Dwellings Act 1988** as in force immediately before the commencement of this clause continue to apply in relation to a bond paid under that Act before that commencement until the amount of the bond is lodged with the Authority under this section.
 - (4) Part 10 of this Act does not apply to a security deposit or bond to which a provision of the **Residential Tenancies Act 1980**, the **Rooming Houses Act 1990** or the **Caravan Parks and Movable Dwellings Act 1988** continues to apply under this clause.
 - (5) A landlord must before the compliance day give to the Authority the amount of any security deposit or bond held by the landlord immediately before the relevant day.
Penalty: 10 penalty units.
 - (6) An amount of security deposit or bond must be lodged together with a completed bond lodgment form.
 - (7) An amount lodged with the Authority under this clause is deemed to be a bond for the purposes of this Act and on that lodgment—
 - (a) this Act applies in respect of that bond; and
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- (b) the **Residential Tenancies Act 1980**, **Rooming Houses Act 1990** or **Caravan Parks and Movable Dwellings Act 1988**, as the case requires, ceases to apply to that bond.
- (8) Subclause (5) does not apply to an amount of security deposit or bond—
- (a) that is paid to a tenant or resident or the Director of Housing or an agent of the Director of Housing or to which the landlord becomes entitled before the compliance day; or
- (b) in respect of which a claim for compensation has been made to the Residential Tenancies Tribunal but is not determined before the compliance day.

- (9) In this clause—

compliance day means the day that is 6 months after the relevant day;

landlord means—

- (a) a landlord within the meaning of the **Residential Tenancies Act 1980**; or
- (b) a rooming house owner within the meaning of the **Rooming Houses Act 1990**; or
- (c) a caravan park owner or caravan owner within the meaning of the **Caravan Parks and Movable Dwellings Act 1988**;

relevant day means the day on which Part 10 of this Act comes into operation.

**Division 3—Transitional and savings provisions—
Residential Tenancies (Amendment) Act 2002**

9 Section 16 tenancy agreements

Despite the repeal of section 16 by the **Residential Tenancies (Amendment) Act 2002**, a tenancy agreement created under section 16 as in force immediately before its repeal is not affected and the rooming house provisions do not apply to that agreement.

10 Applications for non-urgent repairs

Section 75(2) as amended by the **Residential Tenancies (Amendment) Act 2002** applies to an application in relation to a Director's report received before the commencement of section 17 of that Act if the period under section 75(2) (as in force immediately before its amendment) for making the application has not expired before that commencement.

11 Warrants of possession

Despite the amendment of section 355(1) by the **Residential Tenancies (Amendment) Act 2002**, a warrant of possession in the form approved by the Minister is sufficient for the purposes of Part 7 if the warrant—

- (a) was issued before the commencement of section 90 of that Act; and
 - (b) before that commencement has not—
 - (i) lapsed or been cancelled; or
 - (ii) been executed.
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SCHEDULE 2

INFRINGEMENT OFFENCES

| | |
|-----------------|-----------------|
| Section 26(2) | Section 125(2) |
| Section 29(1) | Section 125(3) |
| Section 29(2) | Section 127(1) |
| Section 34 | Section 145 |
| Section 35(1) | Section 146(3) |
| Section 41 | Section 147 |
| Section 43(1) | Section 148(1) |
| Section 43(2) | Section 150(1) |
| Section 43(2A) | Section 150(2) |
| Section 49 | Section 151(1) |
| Section 51(1) | Section 151(2) |
| Section 51(2) | Section 151(2A) |
| Section 51(3) | Section 160 |
| Section 56 | Section 166 |
| Section 66(1) | Section 182 |
| Section 66(2) | Section 183(1) |
| Section 66(3) | Section 183(2) |
| Section 66(4) | Section 184(1) |
| Section 96 | Section 184(2) |
| Section 97(1) | Section 184(3) |
| Section 99 | Section 186(1) |
| Section 100(1) | Section 198(1) |
| Section 100(2) | Section 198(2) |
| Section 100(2A) | Section 264 |
| Section 107 | Section 287 |
| Section 124 | Section 295 |
| Section 125(1) | Section 298(1) |

Sch. 2
amended by
No. 17/1999
s. 41(3),
substituted by
No. 103/2004
s. 67.

Residential Tenancies Act 1997
No. 109 of 1997

Sch. 2

| | |
|----------------|----------------|
| Section 298(2) | Section 382(2) |
| Section 358(1) | Section 405(1) |
| Section 358(2) | Section 405(4) |
| Section 369 | Section 406 |
| Section 372 | Section 424(1) |
| Section 373 | Section 424(3) |
| Section 377(1) | Section 425 |
| Section 377(2) | Section 428 |
| Section 377(3) | |

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 30 October 1997

Legislative Council: 20 November 1997

The long title for the Bill for this Act was "to re-enact with amendments the law relating to residential tenancies, rooming houses and caravan parks, to provide for a Residential Tenancies Tribunal and a Residential Tenancies Bond Authority, to repeal the **Residential Tenancies Act 1980**, the **Caravan Parks and Movable Dwellings Act 1988** and the **Rooming Houses Act 1990** and for other purposes."

The **Residential Tenancies Act 1997** was assented to on 23 December 1997 and came into operation as follows:

Part 1 (sections 1–25) on 23 December 1997: section 2(1); rest of Act on 1 July 1998: Government Gazette 18 June 1998 page 1512.

Residential Tenancies Act 1997
No. 109 of 1997

Endnotes

2. Table of Amendments

This Version incorporates amendments made to the **Residential Tenancies Act 1997** by Acts and subordinate instruments.

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998, No. 52/1998

Assent Date: 2.6.98
Commencement Date: Ss 234–242 on 1.7.98: Government Gazette 18.6.98 p. 1512
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Licensing and Tribunal (Amendment) Act 1998, No. 101/1998

Assent Date: 1.12.98
Commencement Date: S. 32 on 1.2.99: Government Gazette 24.12.98 p. 3204
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Fair Trading (Inspectors Powers and Other Amendments) Act 1999, No. 17/1999

Assent Date: 18.5.99
Commencement Date: Ss 41, 42 on 1.9.99: Government Gazette 19.8.99 p. 1901
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Planning and Environment (Amendment) Act 2000, No. 28/2000

Assent Date: 30.5.00
Commencement Date: S. 22 on 31.5.00: s. 2(1)
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Business Registration Acts (Amendment) Act 2000, No. 35/2000

Assent Date: 6.6.00
Commencement Date: S. 50 on 19.6.00: Government Gazette 15.6.00 p. 1248
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Statute Law Revision Act 2000, No. 74/2000

Assent Date: 21.11.00
Commencement Date: S. 3(Sch. 1 item 108) on 22.11.00: s. 2(1)
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Residential Tenancies Act 1997
No. 109 of 1997

Endnotes

Statute Law Amendment (Authorised Deposit-taking Institutions) Act 2001, No. 11/2001

Assent Date: 8.5.01
Commencement Date: S. 3(Sch. item 63) on 1.6.01: s. 2(2)
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Statute Law Amendment (Relationships) Act 2001, No. 27/2001

Assent Date: 12.6.01
Commencement Date: S. 3(Sch. 1 item 10) on 28.6.01: Government Gazette 28.6.01 p. 1428
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Statute Law (Further Revision) Act 2002, No. 11/2002

Assent Date: 23.4.02
Commencement Date: S. 3(Sch. 1 item 56) on 24.4.02: s. 2(1)
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Residential Tenancies (Amendment) Act 2002, No. 45/2002

Assent Date: 22.10.02
Commencement Date: Ss 4–100 on 1.7.03: Government Gazette 5.6.03 p. 1287
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Fair Trading (Amendment) Act 2003, No. 30/2003

Assent Date: 27.5.03
Commencement Date: S. 91 on 28.5.03: s. 2(1)
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Residential Tenancies (Amendment) Act 2003, No. 93/2003

Assent Date: 25.11.03
Commencement Date: 30.6.04: s. 2(2)
Current State: All of Act in operation

Fair Trading (Enhanced Compliance) Act 2004, No. 103/2004

Assent Date: 21.12.04
Commencement Date: Ss 62–67 on 22.12.04: s. 2(1)
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 174) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

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Residential Tenancies (Further Amendment) Act 2005, No. 63/2005

Assent Date: 20.9.05
Commencement Date: Ss 4–6, 8, 14–31 on 20.9.05: s. 2(1); ss 7, 9–13 on 1.12.05: s. 2(3)
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Infringements (Consequential and Other Amendments) Act 2006, No. 32/2006

Assent Date: 13.6.06
Commencement Date: S. 94(Sch. item 42) on 1.7.06: Government Gazette 29.6.06 p. 1315
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Children, Youth and Families (Consequential and Other Amendments) Act 2006, No. 48/2006

Assent Date: 15.8.06
Commencement Date: S. 42(Sch. item 30) on 23.4.07: s. 2(3)
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Fair Trading and Consumer Acts Amendment Act 2007, No. 17/2007

Assent Date: 29.5.07
Commencement Date: S. 36(Sch. item 12) on 30.5.07: s. 2(1)
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

3. Explanatory Details

No entries at date of publication.