



Government of Western Australia
Department of Commerce

EXPLANATORY MEMORANDUM

Residential Tenancies Amendment Bill 2011

Signed:

Hon Simon O'Brien MLC
MINISTER FOR COMMERCE

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RESIDENTIAL TENANCIES AMENDMENT BILL 2011

Overview of Bill

The purpose of the Bill is to amend the residential tenancy legislation in Western Australia in order to provide greater balance between the rights and obligations of tenants and lessors and enhance the clarity and effectiveness of the legislation.

The *Residential Tenancies Act 1987* (the Act) regulates the relationship between lessors and tenants in residential premises in Western Australia. The primary objective of the Act is to outline the rights and obligations of lessors and tenants, to determine how tenancy agreements can be terminated and to provide a cost effective mechanism for the resolution of disputes.

The Bill contains a number of proposed amendments that arise from a statutory review of the Act. These provisions are aimed at making current best practice in the residential tenancy industry the law, including mandating the use of property condition reports at the commencement and conclusion of a tenancy, and mandating the use of a prescribed standard tenancy agreement that all parties can understand. The proposed amendments seek to make compulsory the depositing of all tenant bonds with the Bond Administrator. This will lead to greater transparency for tenants as to the handling of their bond monies.

Part 3 of the Bill contains proposed amendments to better assist the Department of Housing (DoH) to respond to antisocial behaviour in social housing tenancies. The provisions seek to provide DoH with alternative mechanisms for applying to the Magistrates Court (the Court) to terminate a tenancy where a tenant is engaging in serious and ongoing disruptive behaviour or where the tenant is using the premises for illegal purposes. It is proposed that the application can be made to the Court without DoH first having to issue the tenant with a breach notice. The proposed amendments also create provisions that will permit DoH to apply to the Court to terminate a tenancy where the tenant is no longer eligible for social housing or where the tenant has been offered alternative social housing and refuses that offer.

Part 4 of the Bill implements a nationally consistent approach to the regulation of residential tenancy databases developed by the Ministerial Council on Consumer Affairs for implementation in the legislation of each jurisdiction. Tenancy databases are a legitimate tool for minimising risk in the rental property market. The Bill will improve the quality of information on tenancy databases and establish regulatory requirements so tenants are not unfairly excluded from the private rental market.

The proposed reforms will assist in providing greater clarity in residential tenancy transactions in a regulatory environment that is fair and that does not detract from ongoing investment in the industry.

Part I – Preliminary

Clause 1

Short Title

This clause provides the short title of the Act.

Clause 2

Commencement

Provides that the Act is to come into operation as follows:

- sections 1 and 2 - on the day on which the Act receives Royal Assent; and
- the rest of the Act – on a day fixed by proclamation, and different days may be fixed for different provisions.

Clause 3

Act amended

Provides that this Act will amend the *Residential Tenancies Act 1987*.

Clause 4

Long title amended

Amends the long title by deleting the word “owners” and replacing it with the word “lessors”.

Clause 5

Section 3 amended

Terms used in this Act

Amends section 3 which sets out the terms used in the Act.

Deletes the definitions of owner and tenant.

Inserts into section 3 the following definitions in alphabetical order:

bond means a security bond or a tenant compensation bond.

bond administrator means the Commissioner as defined in the *Fair Trading Act 2010* section 6.

expiry day in relation to a residential tenancy agreement that creates a tenancy for a fixed term, means the day on which the residential tenancy agreement would (but for the operation of this Act) upon its terms have terminated by effluxion of time or the happening of an event.

lessor —

(a) means a person who grants the right to occupy residential premises under a residential tenancy agreement; and

(b) includes —

- (i) a personal representative, successor or assignee of a lessor; and
- (ii) where the context requires, a prospective, or former, lessor.

The definition of a lessor includes a tenant who has given, or is to give, the right to occupy residential premises to a subtenant.

property manager, in relation to residential premises the subject of a residential tenancy agreement, means a person who, being licensed under the *Real Estate and Business Agents Act 1978*, acts as the agent of the lessor in respect of the premises.

reasonable grounds, for suspecting that a tenant has abandoned residential premises, means that the tenant has failed to pay rent under the residential tenancy agreement and that at least one of the following has occurred -

- (a) the presence at the premises of uncollected mail, newspapers or other material;
- (b) reports from neighbours of the tenant or from other persons indicating the tenant has abandoned the premises;
- (c) the absence of household goods at the premises;
- (d) the disconnection of services (including gas, electricity and telephone) to the premises.

Rental Accommodation Account means the Rental Accommodation Account established under Schedule 1 clause 3.

tenant -

- (a) means a person who is granted a right of occupancy of residential premises under a residential tenancy agreement; and
- (b) includes, wherever the context requires, a prospective, or former, tenant.

tenant compensation bond means a bond referred to in section 59D(2).

Amends the definition of “residential tenancy agreement” to extend the definition to agreements to whether they are in writing or not.

Amends the definition of “security bond” to correct gender specific references.

Clause 6

Section 5 amended

Application of the Act

Amends section 5(2) by deleting “agreement” and replacing this with “agreement in any of the following circumstances—“.

Amends section 5(2)(a) so that the Act will apply to a tenancy agreement arising out of a contract of sale where the tenancy agreement is for a period of one month or longer.

Amends section 5(2)(f) to delete “owner” and replace this with “lessor”, and to remove “or” to correct the grammar.

Amends section 5(3) to delete “to – “and replace this with “to any of the following – “.

Deletes section 5(3)(b) and replaces it with the following:

(b) accommodation for students provided —

- (i) by an educational institution; or
- (ii) by an entity, other than the educational institution, if the accommodation is provided other than for the purpose of making a profit,

unless the accommodation is prescribed, or is of a class prescribed, for the purposes of this paragraph;

(ca) any part of a hospital or nursing home.

Deletes section 5(3)(d) and replaces it with the following:

- (d) any premises used to provide residential care to approved care recipients by an approved provider as defined in the *Aged Care Act 1997* (Commonwealth).

This provision continues to exempt hospitals and nursing homes, and student accommodation provided by educational institutions, to provide them with necessary flexibility. However, private providers of student accommodation will be required to comply with the Act.

Clause 7

Section 7 amended

Transitional provisions

Amends section 7(3) to replace reference to “owner” with the term “lessor”, and to correct a gender specific reference.

Amends section 7(3) to replace “apply, notwithstanding section 29(4) –” with “apply –” to apply plain language drafting.

Amends section 7(3)(c) to replace “in accordance with either paragraph (a) or (b) of clause 2(1) of Schedule 1” with “to the bond administrator” to accommodate changes to Schedule 1 and to draft in plain language.

Deletes section 7(3)(e) and replaces it with the following:

- (e) any amount paid to the bond administrator must be credited to the Rental Accommodation Account and is to be taken, for the purposes of this Act, to have been paid under section 29(4)(b).

This is to accommodate changes to Schedule 1.

Amends the heading of section 7 to read: Transitional provisions relating to the commencement of this Act.

Part II – Administration

Clause 8

Section 9 amended

Commissioner may institute or defend proceedings for party

Amends section 9 by inserting the following definition:

- (1A) In this section –
party, in relation to a residential tenancy agreement, means a lessor or tenant under that agreement.

Amends section 9 to correct gender specific references.

Deletes section 9(10).

- Clause 9** **Section 10 amended**
- Delegation by Commissioner**
- Amends section 10 to correct a gender specific reference.
- Clause 10** **Section 11A amended**
- Information officially obtained to be confidential**
- Amends the penalty in section 11A(1) to a maximum fine of \$20,000.
- Part III – Determination of Disputes**
- Clause 11** **Section 13 amended**
- Jurisdiction over other disputes**
- Amends section 13(5) to correct a gender specific reference.
- Clause 12** **Section 13A amended**
- Magistrates Court’s jurisdiction**
- Amends section 13A to delete the requirement for the consent of the parties to change the location of the court proceedings and to permit the Magistrate to make an order altering the place for the proceedings pursuant to section 22 of the *Magistrates Court (Civil Proceedings) Act 2004*.
- Clause 13** **Section 15 amended**
- Applications for relief and orders thereon**
- Amends section 15(1) to correct for a gender specific reference.
- Amends section 15(4) to replace the term “an agreement” with the term “a residential tenancy agreement”. Section 15(4) is also amended to require the Court, upon an application in relation to a breach of the agreement, to take into account any previous breaches by the lessor. Currently the Act only requires the Court to take into account any previous breaches by the tenant.

Inserts section 15(5) to enable the Court to join a third party to proceedings if the Court is satisfied that:

- (a) the person ought to be bound by, or have the benefit of, a decision of the court in the proceedings; or
- (b) the person's interests are affected by the proceedings; or
- (c) for any other reason it is desirable that the person be joined as a party.

Inserts section 15(6) to enable a Magistrate to join a third party to proceedings in accordance with section 15(5) either on the application of any person or on the court's initiative.

Clause 14 Section 16 Amended

Enforcement

Amends the penalty in section 16(1) to a maximum fine of \$10,000.

Clause 15 Section 17A inserted

Disputes between tenants

Inserts section 17A to enable the Court to hear an application in relation to a dispute between two or more tenants where the tenants are jointly liable under a residential tenancy agreement to pay an amount to the lessor and one tenant has paid the other tenant's portion of that liability. The first tenant may seek a Court order that the second tenant reimburses the first tenant for their portion of the amount paid.

The Court hearing the application may:

- (a) make an order that the tenant that did not pay must pay the tenant who has paid the other tenant's portion;
- (b) order the payment of compensation to the first tenant for loss or injury other than personal injury caused by their failure to pay;
- (c) make such ancillary or incidental order as the Court considers appropriate.

Clause 16

Section 17 amended

Application to vary or set aside an order

Amends section 17(1) to replace “the court that heard and determined the proceedings” with “a competent court”.

Also amends section 17(1) to correct a gender specific reference.

Amends section 17(2) to apply current drafting conventions in relation to periods of time. The phrase “within 14 days of” has been replaced by “within 14 days after”.

Clause 17

Section 19 amended

Witnesses and inspection of documents

Amends section 19 to correct gender specific references.

Amends the penalty in section 19(2) to a maximum fine of \$10,000.

Clause 18

Section 20 amended

General powers in proceedings

Amends section 20(f) by deleting “application or other step in respect of proceedings must be made or” and replaces this with “action must be”.

This amendment permits a competent court, when hearing an application, to amend any relevant period established by the Act in relation to any action that may be taken. For example, if the Act requires that 60 days notice must be given to a party before an application may be made to the Court and the applicant lodges an application on day 58 in error, the Court may, if it chooses to do so, amend the notice period to 58 days and thus allow the application to proceed.

Clause 19

Section 22 amended

Presentation of cases

Amends section 22 by inserting the following definition:

- (1A) In this section –
proceedings means proceedings under this Act other than proceedings for an offence against this Act.

This is to clarify that the requirements to representation of the parties set out in this section only apply in relation to civil disputes.

Amends section 22(1) to correct gender specific references.

Deletes section 22(2) and replaces it with:

- (2) A party to any proceedings may be represented or assisted by an agent in the presentation of the party's case if the agent is authorised by the party to do so and is —
- (a) the property manager of the premises the subject of the proceedings; or
 - (b) employed or engaged by a non-profit association or similar body to act as an advocate for tenants or lessors in proceedings.

This amendment is intended to ensure that, subject to the appropriate authorisation having been signed and lodged with the Court, a party to a proceeding is entitled to be represented or assisted in the Court proceeding by a property manager or an advocate from a non-profit organisation.

Inserts section 22(2A) which requires that the authorisation for the agent must be on a form approved by the Minister and must be lodged either with the initial application or with the response to the application.

Amends section 22(3) by deleting “if –“ and replacing it with “if any of the following applies –“.

Amends section 22(3) to correct a gender specific reference by replacing the phrase “appear personally or conduct the proceedings properly himself; or” with “conduct the proceedings without representation by a legal practitioner”.

Amends sections 22(4) and (5) to correct gender specific references.

Amends section 22(5)(a) by inserting the word “or” at the end of the section.

Deletes section 22(5)(c) and replaces it with:

(c) where the party is a lessor, the person is a property manager of the premises the subject of the proceedings.

The effect of this provision is to replace the word “owner” with lessor” and the word “agent” with “property manager”.

Amends the penalty in section 22(5) to a maximum fine of \$5,000.

Clause 20

Section 23 amended

Settlement by conciliation

Amends section 23(1)(a) and section 23(2) to correct gender specific references.

Inserts section 23(4) to allow a Court to embody the terms of a conciliated agreement in an order of the Court despite the fact that the parties may have agreed to terms that are inconsistent with the Act. This amendment acknowledges that often the parties to residential tenancy agreements are not entirely familiar with all residential tenancy laws, and that they may arrive at a settlement, the terms of which are agreeable to both parties but which may, through ignorance of the law, be contrary to the terms of the Act. The intention of this clause is to ensure the Court, is not hindered from recognising the terms of the agreement simply because it may be inconsistent with the Act. It is intended, however, that a Court would only exercise this discretion where it is appropriate to do so in the circumstances of the case.

Part IV – Rights and obligations of owner and tenant

Clause 21

Part IV heading replaced

This clause deletes the heading to part IV and replaces it with a new heading “Part IV – Residential tenancy agreements”.

Clause 22

Part IV Division 1A inserted

Division 1A – form of residential tenancy agreement and associated documents

Inserts Division 1A into the Act. Division 1A includes new section 27A, which requires that a lessor must not enter into a written residential tenancy agreement except in the prescribed form and provides a penalty of a maximum fine of \$5,000 for failing to comply with this requirement.

Inserts a new section 27B to require the lessor to provide each tenant with a copy of the prescribed information (Schedule 2 of the *Residential Tenancies Regulations 1989*) at the time of entering into a written residential tenancy agreement or within 14 days in any other case. The prescribed information summarises the rights and obligations of tenants and lessors; notes the advisory and conciliation role of the Department of Commerce in relation to residential tenancy disputes; and notes the judicial role of the Magistrates Court. This clause replaces a similar requirement under regulation 14 of the *Residential Tenancies Regulations 1989*. Section 27B creates a penalty of a maximum fine of \$5,000 for failing to comply with this requirement.

Inserts a new section 27C to require the lessor to prepare a property condition report within seven days of the tenant entering into occupation of the premises and to provide two copies of the report to the tenant. Failure to comply with this requirement incurs a penalty of a maximum fine of \$5,000.

If a tenant disagrees with the state of the premises as recorded in the property condition report, the tenant can note the areas of disagreement on the report and return a signed copy of the marked report back to the lessor within seven days of receiving the report. If the tenant marks any areas of disagreement on the property condition report, this has the effect of establishing that the report is not conclusive proof of the condition of the premises at the commencement of the tenancy. If the tenant fails to return a copy of the property condition report to the lessor within seven days, or returns the report without any disagreement, the report is taken to be a true and accurate description of the premises.

New section 27C also requires that a lessor must, as soon as practicable after the termination of a tenancy, conduct an inspection of the premises, prepare a final property condition report and provide a copy of the report to the tenant. Failure to comply with this requirement incurs a penalty of a maximum fine of \$5,000.

The tenant is to be given a reasonable opportunity to be present at the inspection at the termination of the tenancy.

Regulations may be made to prescribe information that must be included in a property condition report.

Clause 23 Section 27 amended

Restriction on consideration for tenancy agreement

Amends section 27(1) to clarify that, subject to subsection (2), the only monetary amount that a lessor can seek from a tenant is rent and a security bond.

Amends the penalty in section 27(1) to a maximum fine of \$5,000.

Amends section 27(2)(a) to allow for a maximum cap on the option fee to be prescribed in the Regulations. If an option is refused by the lessor, the option fee is to be returned to the applicant by way of electronic transfer of funds or cash.

Clause 24 Section 28 amended

Rent in advance

Amends the penalty in section 28(1) to a maximum fine of \$5,000.

Inserts a new section 28(2) so that a person must not require from a tenant more than two weeks rent in advance under a tenancy agreement. Failure to comply with this requirement incurs a penalty of a maximum fine of \$5,000.

This amendment, however, does not prohibit a tenant from offering to pay more than two weeks rent in advance.

Clause 25

Section 29 amended

Security bonds

Inserts a new section 29(1A) to define the terms “pet” and “security bond” for the purposes of section 29, which, unless the contrary intention appears, are:

pet does not include a guide dog as defined in the *Dog Act 1976* section 3(1); and

security bond includes an instalment of a security bond.

Amends section 29(1)(b)(ii) to provide that a prescribed amount to meet the cost of fumigation may be charged as part of the security bond if the tenant is permitted to keep on the premises any pet capable of carrying parasites that can affect humans, excluding guide dogs. The current fumigation requirements in the Act can only be charged for cats and dogs and do not exclude guide dogs. Amends the penalty to a maximum fine of \$5,000.

Inserts section 29(2A) to provide that a person may receive a security bond in instalments.

Amends section 29(2) to delete the current exemption that allowed a person to charge an unlimited bond if the premises had been the person’s primary residence in the three months preceding the residential tenancy agreement. The current exemption for premises where the weekly rate of rent exceeds a prescribed threshold will remain.

Amends section 29(4) to require that all security bonds must be deposited with the Bond Administrator in accordance with Schedule 1 clause 5A. Section 29(4)(c) is amended to require that the person receiving the bond create a record by completing a form approved by the Minister for the lodgement of bond and to lodge this record with the Bond Administrator at the time of lodging the bond payment.

Section 29(4)(c)(iii) concerning the records to be maintained for deposits of security bonds in financial institutions has been deleted as it is no longer necessary. This provision has been moved to section 93(3) of the Act to accommodate bonds held in financial institutions during the transitional period.

Amends section 29(4)(d) to clarify that the person receiving the bond must provide the tenant with a copy of the form that was lodged with the bond administrator within a prescribed period of time.

Amends the penalty in section 29(4) to a maximum fine of \$20,000.

Amends section 29(4)(a) by adding the word “and” to the end of the section to make the section grammatically correct.

Deletes section 29(5) as all bonds will be lodged with the Bond Administrator, consequently there will not be a requirement for lessors or property managers to retain independent records of the lodgement of bonds.

Amends section 29(6) by adding the phrase “or misleading” to make this section consistent with other parts of the Act.

Amends the penalty in section 29(6) to a maximum fine of \$5,000.

Section 29(7) has been inserted to require the Bond Administrator to pay the amount of the security bond in accordance with Schedule 1 clause 5.

Section 29(8) has been inserted to require that a lessor and property manager ensure that a bond disposal form is not signed by a tenant unless: the tenancy to which the bond relates has been terminated; and the amount of the bond to be paid to the lessor or tenant has been stipulated on the form. Inserts a penalty of a maximum fine of \$5,000 for failure to comply with this requirement.

Clause 26

Section 29A deleted

Power of Commissioner to obtain information relating to security bond accounts

Deletes section 29A concerning the power of Commissioner to obtain information relating to security bonds in financial institutions as all bonds will be held by the Bond Administrator. This provision has been moved section 95 of the Act which deals with the transition of bonds.

Clause 27 **Section 30 amended**
Variation of rent

Amends section 30(1) to clarify that section 30 does not apply to a residential tenancy agreement under which the rent payable is calculated by reference to the tenant's income, and to require that a rent increase must be provided in a written notice in a form approved by the Minister.

Amends section 30(2)(a) to provide that the rent under a fixed term tenancy may only be increased during the term of the agreement if the amount of the increase, or method of calculating the increase, is set out in the tenancy agreement. It is intended that such a method of calculating the rent increase be objectively measurable.

Amends the heading to section 30 to read: Variation of rent (except where calculated by reference to tenant's income).

Clause 28 **Sections 31A and 31B inserted**

This clause inserts sections 31A and 31B.

Variation of rent where calculated by reference to tenant's income

Inserts new section 31A into the Act. Section 31A applies to residential tenancy agreements where the rent payable is calculated by reference to the tenant's income. Section 31A requires that if there is to be a change to the method of calculating the rent payable, the tenant must:

- receive, in writing in a form approved by the Minister, at least 60 days notice of the proposed change; and
- that the change cannot occur more frequently than six months from the day it was last so changed, or not less than six months after the day on which the tenancy commenced.

Increase in rent after renegotiating lease

Inserts new Section 31B, which applies where one tenancy agreement has concluded or is coming to an end and the lessor and tenant are to enter into a new tenancy agreement for the same premises. Section 31B provides that any increase in rent from the former agreement to the new agreement cannot take effect for a period of 30 days after the day on which the new agreement has been entered into. This would normally be the date that the agreement is signed by all parties.

Clause 29 Section 31 amended

Increase in security bond

Amends section 31(1)(b) by deleting “12 months” and inserting “6 months”. This amendment will permit a lessor to increase a security bond at six monthly intervals if there has been a corresponding increase in the rent payable under the residential tenancy agreement.

Clause 30 Section 32 amended

Limitation of excessive rents in certain circumstances

Amends section 32(2) to remove reference to the grounds on which a tenant can make an application to the Court for an order declaring a rent increase to be excessive. The effect of this amendment is to broaden the grounds on which a tenant may make an application for an order that the rent is excessive. The tenant may apply to the Court if there has been an increase in rent, a change in the method of calculating rent resulting in a rent increase, or a significant reduction in chattels or facilities provided. The application to the Court must be within 30 days of the tenant receiving notice of a rent increase or any greater period as the Court thinks fit.

Inserts new section 32(3A) to provide that a tenant may make an excessive rent application to the Court despite having agreed to the rent increase or having paid the increased rent to which the application relates.

Amends section 32(4) so that a Court may back date an order of excessive rent.

Amends the penalty in section 32(7) to a maximum fine of \$5,000.

Clause 31

Section 33 amended

Duty to give receipt for rent

Amends section 33(1) to simplify the language used.

Also amends the penalty applicable under section 33(1) to a maximum fine of \$5,000.

Amends section 33(2) to reflect current drafting practices in relation to the citation of legislation.

Clause 32

Section 34A inserted

Manner of payment of rent

Inserts new section 34A to provide that unless a residential tenancy agreement specifies the method of payment of rent, a tenant is able to pay the rent in the form of cash, cheque or by payment directly into an authorised financial institution.

Clause 33

Section 34 amended

Proper records of rent to be kept

Amends section 34(1) to provide that the record of rent is kept in accordance with the new subsection 34(2A).

Amends the penalty in section 34(1) to a maximum fine of \$5,000.

Inserts subsection 34(2A) to require that the record of rent specify:

- (a) the fact that the payment is for rent;
- (b) the date the rent is received;
- (c) the name of the person paying the rent;
- (d) the amount paid;
- (e) the period in respect of which it is paid; and
- (f) the premises in respect of which it is paid.

Amends section 34(2) to replace “is to his knowledge false” with “the person knows is false or misleading” and to increase the penalty to a maximum fine of \$5,000.

Clause 34

Section 35 amended

Payment of rent by post-dated cheques etc prohibited

Amends the penalty in section 35 to a maximum fine of \$5,000.

- Clause 35** **Part IV Division 2 heading amended**
- Division 2 - General**
- Amends the heading to Part IV Division 2 by deleting “General” and replacing this with “Standard terms”.
- Clause 36** **Section 37 deleted**
- Terms used in this division**
- Deletes section 37. This provision is no longer required because, for consistency, the term “residential tenancy agreement” has been inserted throughout the Act.
- Clause 37** **Section 38 amended**
- Tenant’s responsibility for cleanliness and damage**
- Amends section 38 to make minor terminology changes.
- Amends section 38(1)(b) to delete reference to “within three days” of damage occurring. This amendment will require that a tenant notify a lessor of any damage to premises as soon as practicable after the damage occurs. This amendment allows for situations in which the tenant may be absent from the premises when the damage occurs, such as if they are in hospital or on holidays.
- Clause 38** **Section 39 amended**
- Tenant’s conduct on premises**
- Amends section 39 to make a change in terminology from “every agreement” to “every residential tenancy agreement”.
- Clause 39** **Section 40 replaced**
- Vacant possession**
- Inserts a new section 40 which provides a revised definition of the term “premises” for the purposes of vacant possession. In addition to any part of the premises to which the tenant does not have a right of exclusive occupation, under this amendment “premises” also includes any part of the premises that is not designed to be used for human habitation and to which the parties have agreed the tenant will not have vacant possession. An example of this might be a shed on the property that the lessor wishes to exclude from the residential tenancy agreement.

Section 40(2) provides that it is a term of every residential tenancy agreement that the tenant must have vacant possession of the premises on the day on which the tenant is entitled to enter into occupation of the premises under the agreement.

Clause 40 Section 41 amended

Legal impediments to occupation as residence

Amends section 41 to change “every agreement” to “every residential tenancy agreement” and to correct a gender specific reference.

Clause 41 Sections 42 to 46 replaced

Deletes sections 42 to 46 and inserts new sections 42 to 46.

Lessor’s responsibility for cleanliness and repairs

New section 42(1) inserts a definition of “premises” to include chattels and fixtures provided with the premises but does not include any chattels or fixtures disclosed to the tenant as not working before the agreement was entered into, or those fixtures or chattels that a tenant could not reasonably have expected to be working.

New section 42(2) requires a lessor to deliver up to the tenant vacant possession of the premises in a reasonable state of cleanliness and a reasonable state of repair and maintain the premises in a reasonable state of repair, having regard to the age and character of the premises. This section also requires a lessor, after the need for repair arises, to attend to the repairs within a reasonable period of time. The requirement remains for the lessor to comply with any building, health and safety laws as they apply to the premises.

Urgent repairs

Inserts a new section 43 in relation to urgent repairs.

Section 43(1) defines the following terms for the section:

prescribed period – being either 24 hours for an essential service that is prescribed in the Regulations, or 48 hours for any other urgent repair. For example, prescribed essential repairs are likely to include blocked sewerage, gas faults and electrical faults at the premises other than supply faults that must be rectified by the gas or electricity service providers, and holes in any of the external surfaces of the premises, including the roof, windows and doors. Urgent repairs requiring attention within 48 hours are likely to be repairs to an oven and minor leaks in the ceiling;

suitable repairer – means a person licensed or qualified to conduct the repairs and who ordinarily conducts the repairs as part of their business or employment; and

urgent repairs – means repairs that are necessary to restore an essential service, or repairs necessary to avoid exposing a person to injury, the property to damage or the tenant to undue inconvenience.

Section 43(2) makes it a term of every residential tenancy agreement that if the need for urgent repairs arises the tenant is required to notify the lessor as soon as practicable of the need for urgent repairs. The lessor must ensure those repairs are carried out by a suitable repairer as soon as practicable after the notification.

Section 43(3) makes it a term of every agreement that if within the prescribed period (either 24 or 48 hours) after the need for urgent repairs arises the lessor is:

- unable to be contacted; or
- having been notified of the need for repair fails to ensure the repairs are carried out,

then the tenant may arrange for work to be carried out by a suitable repairer to the minimum extent necessary. The lessor must, as soon as practicable after the repairs are carried out, reimburse the tenant for any reasonable expense incurred in arranging for the repairs to be carried out and paying for those repairs.

Quiet enjoyment

Inserts a new section 44(1) to define “premises” for the purpose of s44. The definition of “premises” includes chattels and fixtures provided with the premises but does not include any chattels or fixtures disclosed to the tenant as not working before the agreement was entered into, or those fixtures or chattels that a tenant could not reasonably have expected to be working.

Inserts section 44(2) which reflects the current section 44(1). This section provides that a tenant is entitled to have quiet enjoyment of the premises, and that the lessor must not cause or permit interference with the peace comfort or privacy of the tenant in their use of the premises, and further, that the lessor must take all reasonable steps to ensure that any other tenant of the lessor residing in adjacent premises also does not interfere with the peace, comfort and privacy of the tenant.

Replaces the term “owner” with the term “lessor” throughout.

Securing premises

Inserts a new section 45 to make it a term of every residential tenancy agreement that minimum conditions of security may be prescribed in the Regulations, and that a lessor is obliged to provide and maintain the minimum security requirements as prescribed. Section 45 also provides that a lock or other means of securing the premises must not be altered or removed by either party without the consent of the other party and that the other party must not unreasonably withhold consent.

The current sections 45(2) and 45(3) that create an offence for removing or altering a lock without consent have been deleted from section 45 and will be contained in section 59F of the Act.

Lessor's right of entry

Inserts a new section 46 that varies from the current section 46 in the following manner:

- inserts a definition of lessor for the purposes of this section to include a property manager of the premises acting on behalf of the lessor(section 46(1));
- inserts a definition of premises as being any part of the premises in respect of which a tenant has a right of exclusive occupation (section 46(1));
- inserts a definition of a reasonable time as being between the hours of 8.00am and 6.00pm on a weekday, between 9.00am and 5.00pm on a Saturday or at any other time agreed between the lessor and tenant (section 46(1));
- in addition to the existing circumstances in which a lessor may enter the premises, inserts the ground of securing the premises in accordance with section 77(5) of the Act where there are reasonable grounds to suspect the premises have been abandoned (section 46(2)(d));
- removes the right to inspect the premises at the time of collecting rent from the home given the other opportunities for entry and inspections, including routine inspections with advanced notice (section 46(2)(b)) and consent of the tenant given at, or immediately before, the time of entry (section 46(2)(h));
- inserts a limit on the number of routine inspections that may be carried out on residential premises to four in a 12 month period (section 46(3));
- makes it a requirement of every tenancy agreement that the lessor, prior to issuing a notice of entry, make a reasonable effort to negotiate a day and time for entry that does not unduly inconvenience the tenant (section 46(4));
- inserts a requirement that the lessor, when issuing a notice of entry, must stipulate the day of intended entry and whether that entry will be in the morning or afternoon (section 46(5));
- inserts a provision that entitles a tenant to be on the premises when the lessor shows the premises to prospective tenants or purchasers (section 46(6));
- inserts a requirement that it is a term of every residential tenancy agreement that a lessor, when entering the premises, must do so in a reasonable manner and must not without the tenant's consent, stay or permit others to stay on the premises longer than is necessary (section 46(7)); and

- inserts a provision that requires a lessor to compensate a tenant for any damage done by the lessor or a person accompanying the lessor to the tenant's goods when exercising a right of entry to the premises under subsection (2) (section 46(8)).

Clause 42 Section 47 amended

Right of tenant to affix and remove fixtures etc

Amends section 47(1) to change "An agreement" to "A residential tenancy agreement".

Amends section 47(2) to correct a gender specific reference.

Inserts section 47(3) which allows a lessor to affix any fixture or to make alterations or renovations to the premises but only with the tenant's consent and provides that a tenant must not unreasonably withhold such consent from the lessor.

Clause 43 Section 48 amended

Lessor to bear outgoings in respect of premises

Amends section 48(a) to replace "It is a term of every agreement" with "It is a term of every residential tenancy agreement".

Amends section 48(c) to replace "'water services", as defined in the *Water Agencies (Powers) Act 1984*" with "water supply or sewerage services under the *Water Agencies (Powers) Act 1984*."

Inserts a new section 48(2) to make it a requirement of every residential tenancy agreement that the lessor bears all rates, taxes or charges imposed under section 36 of the *Strata Titles Act 1985*.

Clause 44 Section 49A inserted

Lessor's and tenant's responsibilities in respect of public utility services

Inserts new section 49A into the Act.

Section 49(A)(1) inserts the following definitions:

GST has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth);

public utility services has the meaning given in the *Land Administration Act 1997* section 3(1).

Section 49A(2) makes it a term of every residential tenancy agreement that a tenant must only pay a charge for the provision of a public utility service if the charge is calculated by reference to the consumption of that public utility service by the tenant and the tenant is given notice in writing of the charge specifying:

- a) if service is metered, the relevant meter reading and the charge per metered unit; or
- b) if the service is not separately metered and the lessor and tenant have previously agreed in writing as to how the charge is to be calculated, the calculation of the charge in accordance with the agreed method.

It also provides that it is a term of every residential tenancy agreement that the tenant must be provided with the full details of the account, including the meter readings and charge per meter unit or, if the charge is calculated by an agreed method, the calculation and GST payable.

Clause 45 Section 49 amended

Right of tenant to assign or sub-let

Amends section 49 of the Act to change “An agreement” to “A residential tenancy agreement” and to correct gender specific references.

Clause 46 Section 50 amended

Vicarious responsibility of tenant for breach by other person lawfully on premises

Amends section 50 of the Act to replace the term “every agreement” with the term “every residential tenancy agreement”.

Clause 47 Part IV Division 3 heading inserted

Inserts new heading Part IV Division 3 – General.

Clause 48

Section 51 replaced

Tenant to be notified of lessor's name and address

Inserts a revised section 51 to:

- require the lessor, at the time of entering into a residential tenancy agreement, to notify the tenant in writing of the full name and address of the lessor, and any person having superior title to that of the lessor, or if the lessor is a body corporate, the full name and business address of the secretary of the body corporate, unless the premises are managed by a property manager (section 51(1));
- insert a penalty of a maximum fine of \$5,000 for failing to provide the tenant with the full name and address of the lessor (section 51(1));
- require that, at the time of entering into the residential tenancy agreement, the lessor and the property manager ensure the tenant is notified in writing of the full name of the lessor and the full name and address of the property manager (section 51(2));
- insert a penalty of a maximum fine of \$5,000 for failing to provide the tenant with the full name of the lessor and the full name and address of the property manager (section 51(2));
- require that a person who succeeds the lessor as the new lessor, advise the tenant in writing within 14 days of the succession of the full name and address of the new lessor, or if the new lessor is a body corporate, advise the tenant of the full name and business address of the secretary of the body corporate (section 51(3));
- insert a penalty of a maximum fine of \$5,000 for failing to provide the tenant with the full name and address of the lessor (section 51(3));
- require that a lessor advise a tenant in writing within 14 days of any change to any name or address required to be notified under this section (section 51(4)); and
- insert a penalty of a maximum fine of \$5,000 for failing to provide the tenant the details of any changes to names or addresses required to be disclosed under this section (section 51(4)).

Clause 49

Section 52 amended

Failure to pay rent with intention it be recovered from security bond

Amends the penalty in section 52 to a maximum fine of \$5,000.

Clause 50**Section 53 replaced****Tenant's name, place of employment and forwarding address**

Inserts a revised section 53 to:

- require that a tenant not falsely state their place of employment;
- amend the penalty for stating a false place of employment to a maximum fine of \$5,000;
- require that where a tenant has notified a lessor of a place of employment, and that place of employment changes, the tenant shall notify the lessor of the new place of employment within 14 days of the change;
- amend the penalty for failing to notify of a change in place of employment to a maximum fine of \$5,000;
- require a tenant, upon delivering up possession of the premises, to notify the landlord of a forwarding address or the tenant's postal address; and
- amend the penalty for failing to notify the lessor of a forwarding address or postal address to a maximum fine of \$5,000.

Clause 51**Section 54 amended****Lessor to deliver a copy of agreement to tenant**

Amends section 54 to replace "owner, or agent of an owner" with "lessor or property manager of residential premises", and to insert "residential tenancy" after the word "written".

Amends section 54(1)(b) to reduce the timeframe for providing a tenant with a fully executed copy of the agreement from 21 days to 14 days after it is signed by the tenant.

Amends the penalty in section 54(1) to a maximum fine of \$5,000.

Amends section 54(2) to replace "an owner, or agent of an owner" with "a lessor or a property manager of residential premises", and to replace "the owner, or agent of the owner" with "the lessor or property manager".

- Clause 52** **Section 55 replaced**
- Cost of written agreement to be borne by lessor**
- Inserts a revised section 55 to replace the term “owner” with “lessor” and the term “agreement” with “residential tenancy agreement”.
- Clause 53** **Section 56 amended**
- Discrimination against tenants with children**
- Amends the penalties in sections 56(1) and 56(2) to maximum fines of \$5,000.
- Amends section 56 to correct a gender specific reference and to draft in plain language.
- This clause also deletes section 56(3) to remove the ability for a person to refuse a tenancy on the grounds that children are to live in the premises where the premises are the principal place of residence of the owner or where the person appointed to manage the premises resides in the adjoining premises.
- Clause 54** **Section 57 amended**
- Accelerated rent and liquidated damages prohibited**
- Inserts a new section 57(2A) to make it an offence to execute a residential tenancy agreement that includes an accelerated rent clause, liquidated damages clause or penalty clause. The penalty is a maximum fine of \$5,000.
- Clause 55** **Section 58 amended**
- Duty of mitigation**
- Amends section 58 by replacing “an agreement” with “a residential tenancy agreement”.
- Clause 56** **Sections 59A to 59F inserted**
- Inserts sections 59A to 59F into the Act.

Minors

Inserts a new section 59A to provide a definition of a minor for the purpose of this section as a person who has reached 16 years of age but has not yet reached 18 years of age. The section provides that a minor may enter into a residential tenancy agreement and may have an agreement enforced against them.

Death of one of more than 2 tenants

Inserts a new section 59B to provide that where there are two or more tenants that are not joint tenants under a residential tenancy agreement, when one of those tenants dies, the deceased tenant's interests in the agreement cease from that point, however, the residential tenancy agreement continues in force with the remaining tenant(s) and the lessor. This provision does not affect the deceased tenant's rights or liabilities as they existed prior to the tenant's death, including a right relating to a security bond.

Recognition of certain persons as tenants

Inserts a new section 59C to provide that a person who has been occupying or residing in premises but is not a tenant of those premises may apply to the Court for an order recognising the person as a tenant or to join that person to proceedings in respect of the premises, or both. Section 59C(2) provides that a person may make an application of this nature at the same time as any other application, or during proceedings before the Court, or independently of either of these happenings.

Section 59C(3) permits the Court to make an order recognising a person as a tenant or joining a person as a party to proceedings. If the Court makes an order recognising a person as a tenant, section 59C(4) permits the Court to make an order that the residential tenancy agreement continue on such terms and conditions as the court thinks are appropriate in the circumstances.

Tenant compensation bonds

Inserts a new section 59D to provide for the Court to order a lessor to pay a bond to the bond administrator if the lessor has failed to compensate a tenant for reasonable expenses incurred for urgent repairs in accordance with section 43.

Inserts a definition of tenant compensation bond for the purposes of this section that means an order under section 15(2)(b) in relation to a failure by a lessor to reimburse a tenant for reasonable expenses incurred by the tenant in arranging for urgent repairs to be carried out, and paying for those repairs, in accordance with section 43.

The bond is to be held by the bond administrator to cover any future tenant compensation orders that might be made against the lessor (section 59(D)(2)). The Court may order that the bond be available for tenant compensation orders in respect of a particular tenant or particular residential premises of the lessor, or any tenant or any residential premises of the lessor (section 59(D)(2)). The Court shall determine the amount of the bond (section 59(D)(3)).

Section 59D(4) provides that a lessor may apply to the court to have all or part of the bond returned to the lessor. The court may make an order returning all or part of the bond to the lessor if the court is satisfied that it is appropriate to do so (section 59(D)(5)).

Section 59D(6) requires the bond administrator to pay the bond either to:

- (a) the tenant in accordance with Schedule 1 clause 10, if the court has made an order for compensation to the tenant under section 15 of the Act; or
- (b) the lessor in accordance with Schedule 1 clause 11, if the court has made an order for return of the bond to the lessor.

Interference with quiet enjoyment

Inserts a new section 59E(1) to make it an offence for a lessor to cause or permit an interference with the tenant's reasonable peace, comfort or privacy in the tenant's use of the premises. The penalty for this offence is a maximum fine of \$10,000.

Section 59E(2) provides that a person's liability in civil proceedings is not affected by virtue of the commencement of proceedings or a conviction under this section.

Offences relating to security of residential premises

Inserts a new section 59F(1) to make it an offence for a lessor or tenant to add, remove or alter any lock or other security device without the permission of the other party. The penalty for this offence is a maximum fine of \$20,000.

Section 59F(2) creates an offence for a property manager to, without reasonable excuse, add, remove or alter any lock of security device without the consent of the tenant. The penalty for this offence is a maximum fine of \$20,000 and is in addition to any civil liability that the property manager might incur.

Section 59F(3) provides that a person's liability in civil proceedings is not affected by virtue of the commencement of proceedings or a conviction under this section.

Clause 57 Part V Division 1 heading inserted

Inserts a new heading for Division 1 – How residential tenancy agreements are terminated.

Clause 58 Section 59 deleted

Term used in this part

Deletes section 59. The definition of agreement has been replaced with the definition of residential tenancy agreement in section 3 of the Act.

Clause 59 Section 60 amended

How residential tenancy agreements are terminated

Amends section 60(1) by deleting "(1) Notwithstanding" and replacing this with "despite", and deleting "except –" and replacing this with "except in one of the following circumstances – ". This amendment is made for the purpose of plain language drafting.

Amends section 60 by inserting a revised section 60(b) to reflect the new requirements under section 70A for the termination of a fixed term agreement.

Deletes subclause (h) and replaces it with "where the agreement terminates by merger;" for the purpose of plain language drafting.

Inserts a further ground for termination of a residential tenancy agreement in section 60(i), which provides that a residential tenancy agreement terminates upon the death of every tenant.

Deletes sections 60(2) and 60(3) as these provisions relate to the continuation of a fixed term agreement beyond its expiry date. These provisions are now addressed in section 76C, as outlined in clause 74 below.

Clause 60 **Part V Division 2 heading inserted**

Inserts a new heading after section 60 Division 2 – Notices of termination.

Clause 61 **Section 61 replaced**

Form of notice of termination by lessor

Deletes section 61 and inserts a new section 61 which reflects changes in terminology from “agreement” to “residential tenancy agreement”, “owner” to “lessor” and “agent” to “property manager”.

Clause 62 **Section 62 amended**

Notice of termination by lessor upon ground of breach of term of agreement

Amends section 62(2) to clarify that the period of notice to terminate a tenancy on grounds that a breach of the agreement has not been remedied shall be not less than seven days before the tenant is required to give possession of the premises to the lessor.

Clause 63 **Sections 63 and 64 replaced**

Deletes sections 63 and 64 and replaces them with a revised section 63 and section 64.

Notice of termination by lessor who has entered into a contract of sale

Inserts a revised section 63 into the Act which varies from the current section 63 in the following manner:

- corrects gender specific references;
- replaces the term “owner” with the term “lessor” and replaces “agreement” with “residential tenancy agreement”; and
- amends the penalty to a maximum fine of \$10,000 where a lessor or property manager falsely states the grounds of notice of termination under this section.

Notice of termination by lessor without any ground

Inserts a revised section 64 into the Act which varies from the current section 64 in the following manner:

- permits a tenant to apply to the court within seven days of having received a “without any ground termination notice” to seek either an order extending the notice period for a further 60 days, or an order that the tenancy is not terminated because the owner was motivated to issue a termination notice after the tenant took action or made a complaint against the lessor;
- permits the Court to extend the period of notice by a period of up to 60 days and make orders for compensation to the lessor or any other orders as the court thinks fit;
- permits the Court to make an order that the tenancy agreement is not terminated, or to make an order terminating the tenancy agreement;
- requires the Court to specify the date on which the tenant is to deliver up vacant possession of the premises, being a day not less than 60 days or within seven days of an order, whichever is the later of the two; and
- reflects changes to terminology with the term “owner” being replaced by the term “lessor” and the term “agreement” being replaced by the term “residential tenancy agreement”.

Clause 64

Section 65 amended

Termination by lessor where section 32 invoked

Amends section 65(1) by replacing “an agreement -” with “a residential tenancy agreement -”.

- Clause 65** **Section 66 amended**
- Notice by lessor not waived by acceptance of rent**
- Amends section 66 to correct a gender specific reference.
- Clause 66** **Section 68 amended**
- Notice of termination by tenant**
- Amends section 68(2) to clarify that the period of notice required to be given by a tenant to terminate a periodic tenancy must be not less than 21 days before the termination day.
- Clause 67** **Section 69 amended**
- Notice of termination by lessor or tenant where agreement frustrated**
- Amends section 69(2) to clarify that the period of notice required to be given by a lessor where a tenancy agreement is frustrated must be not less than seven days before the termination day.
- In the case of notice by the tenant where the agreement is frustrated, section 69(3) is amended to require not less than 2 days notice before the termination day.
- Clause 68** **Section 70A inserted**
- Notice of termination by lessor or tenant at end of fixed term tenancy**
- Inserts a new section 70A into the Act. New section 70A(1) defines the following terms for the purposes of this section:
- agreement*** means a residential tenancy agreement that creates a tenancy for a fixed term;
- notice*** means a notice of termination referred to in subsection (2);
- possession day*** means the day specified in a notice as the day on which possession of the premises is to be delivered up by the tenant and has the meaning affected by subsection (6).

Section 70A provides that in order for a tenancy to end at the conclusion of a fixed term tenancy agreement, either party must provide to the other a notice of termination of the agreement not less than 30 days before vacant possession is to be delivered to the lessor (s70A(3)).

If the possession day extends beyond the expiry day of the fixed term agreement, the agreement is to continue on the same terms, other than the possession date which is varied by the notice (s70A(5)).

If both parties provide notice to the other party, with each notice specifying a different possession day, the relevant day is the earlier of the two days specified (s70A(6)).

If the lessor provides notice to the tenant that extends beyond the original expiry day of the fixed term agreement, and the tenant delivers up vacant possession of the premises prior to the date in the notice, the tenancy agreement terminates on the date that the tenant delivers up vacant possession of the premises (s70A(7)).

Clause 69 Part V Division 4 heading inserted

Inserts a new heading for Division 4 which reads: Orders for termination of residential tenancy agreement.

Clause 70 Section 71 amended

Application by lessor for termination and order for possession

Amends section 71(1) by excluding the operation of this section to notices issued pursuant to the new section 70A for the termination of fixed term tenancy agreements. Termination of fixed term tenancy agreements is addressed under section 72.

Amends section 71(3)(a) by replacing “30 days” with “30 days after the day on which the orders are made”.

Amends section 71(4) to correct for gender specific references.

Amends section 71(5) by replacing “not more than” with “within”.

Clause 71

Section 72 amended

Application for termination and order for possession in relation to fixed term agreements.

Amends section 72 by inserting a new subsection (1A) and revising section 72(1).

Section 72(1A) inserts the following definitions for the purposes of this section:

agreement has the meaning given in section 70A(1);

possession day has the meaning given in section 70A(1).

Section 72(1) is amended to provide that if a tenant fails to deliver up vacant possession of the premises in accordance with a termination notice issued under section 70A, a lessor may, within 30 days of the possession day, apply to a court for an order terminating the tenancy agreement and an order for possession of the premises.

Amends section 72(3)(b) to correct gender specific references.

Amends section 72(4) to replace “not more than” with “within”.

Clause 72

Section 73 amended

Termination of agreement where tenant causing serious damage or injury

Amends section 73(1) to replace “the owner or his agent” with “the lessor or the property manager of the premises”.

Clause 73

Section 74 amended

Termination of agreement where owner would otherwise suffer undue hardship

Amends section 74 by replacing the terms “the owner” and “he” with the term “lessor or tenant”. This amendment has the effect of extending to tenants as well as lessors the right to apply to the court to terminate a tenancy agreement in cases of hardship.

Amends section 74(2) by inserting the word “lessor” after the word “tenant”. This has the effect of extending the ability of a court to make an order for compensation to the lessor if it is the tenant who seeks to terminate the tenancy agreement on the grounds of hardship.

Amends the heading to section 74 to read: termination of agreement where lessor or tenant would otherwise suffer undue hardship.

Clause 74

Sections 76A and 76B, Part V Division 5 heading and section 76C inserted

Inserts new sections 76A to 76C and inserts a new heading to Division 5.

Termination of agreement by lessor if premises abandoned

New section 76A provides that the lessor may give a notice to terminate the agreement if they suspect on reasonable grounds that the tenant has abandoned the premises.

Section 76A(2) provides for the notice to contain certain information and be in a form approved by the Minister.

Section 76A(3) provides that if the tenant does not take action in the court to dispute a notice within seven days of receiving the notice, the tenant is taken to have abandoned the premises.

Reasonable grounds for believing that a tenant has abandoned the premises are defined in section 3 of the Act.

Dispute about s. 76A notice

New section 76B provides that a tenant may make an application to a court seeking an order to set aside a section 76A notice of abandonment, or for compensation (s76B(1)).

An application must be made within 28 days after the notice was given (s76B(2)).

Section 76B(3)(a) provides that if the tenant makes an application within seven days after the notice was given, the court may set aside the notice, while section 76B(3)(b) provides that if the tenant makes an application to the court later than seven days but within 28 days after notice was given, the court may make any of the following orders:

- (i) an order terminating the agreement;
- (ii) an order requiring the lessor to pay to the tenant the amount stated by the court as compensation for loss or expense incurred by the tenant because of the termination of the agreement;
- (iii) any other order it considers appropriate.

Division 5 - General

Inserts a new heading to Division 5 - General

Fixed term tenancies continued as periodic tenancies

Section 76C incorporates the provisions set out in section 60(2) and section 60(3) of the current Act.

Section 76C(1) provides that this section applies to a residential tenancy agreement that creates a tenancy for a fixed term and that is not terminated before the expiry day.

Section 76C(2) provides that subject to subsection (3), a fixed term residential tenancy agreement that is not terminated prior to the expiry day continues as a periodic tenancy agreement after the expiry day on the same terms that applied immediately before the expiry day.

Section 76C(3) provides that a court may, on application by the lessor or tenant, make such modification to the terms of the residential tenancy agreement as may be necessary or appropriate for the agreement's continuance.

Clause 75

Section 77 replaced

Abandonment of premises

Deletes section 77 and inserts new sections 77, 78A and 78B into the Act.

Abandonment of premises

New section 77 provides that if a lessor has reasonable grounds for suspecting that the premises have been abandoned, the lessor may issue a notice in a form approved by the Minister to the tenant by leaving a copy of the notice at the premises and at the tenant's last known place of employment. The notice informs the tenant that the lessor is of the belief that the tenant has abandoned the premises and that if the tenant does not reply within 24 hours advising the premises have not been abandoned, that the lessor will enter the premises to inspect and secure them. The notice must also inform the tenant that the lessor may issue a notice to the tenant under section 76A or apply to a court for an order of abandonment under section 78A.

If the tenant does not respond to the notice within 24 hours, section 77(5) provides that a lessor may enter the premises for the purpose of inspecting the premises and making the premises secure.

Order about abandonment

Inserts section 78A to provide that if a lessor suspects on reasonable grounds that the tenant has abandoned the premises, they may apply to the court to obtain an order that premises have been abandoned by the tenant. The court may make an order declaring the premises to have been abandoned by the tenant on the date stated in the order. If the Court makes an order declaring the premises to have been abandoned, the tenant is taken to have abandoned the premises on the date stated in the order. The lessor may make this application instead of giving the tenant a notice under section 76A.

Review of abandonment order

Inserts section 78B to provide that if a tenant is dissatisfied with an order of the court declaring the premises to be abandoned, the tenant may apply to the court for a review of the decision within 28 days after the decision is made. The review is by way of a rehearing. The Court must exercise its original jurisdiction for the review.

The court may make an order for the lessor to pay compensation to the tenant if it is satisfied that the tenant had not abandoned the premises, or if the court forms the view that the tenant only abandoned the premises on a day after the day stated in the order.

Clause 76 Section 79 amended

Abandoned goods

Section 79(1A) is inserted to define "goods" for the purposes of this section in order to clarify that goods does not include a tenant's documents. A tenant's documents will be governed by the new section 80A of the Act.

Amends section 79 to correct gender specific references and to reflect drafting conventions in relation to the description of periods of time.

Inserts a maximum fine of \$5,000 for a breach of section 79(2). Section 79(2) provides that the owner must store goods in a safe place for 60 days if goods are left on the premises after an agreement has terminated and are not perishable foodstuffs, or do not have a value that is less than the total estimated cost of removal, storage and sale.

Inserts a maximum fine of \$5,000 for a breach of section 79(3). Section 79(3) provides that an owner shall, seven days before storing abandoned goods, send notice to the forwarding address of the tenant if one has been provided, and publish a notice in newspaper circulating generally throughout the State.

Deletes section 79(16) of the Act as this section is no longer relevant. The term "owner" has been replaced by the term "lessor" and this is defined in section 3. The term "Rental Accommodation Account" is also now defined in section 3.

Clause 77 Section 80A inserted

Abandoned documents

Inserts a new section 80A into the Act.

Section 80A(1) defines 'tenant's document' for the purposes of this section as follows:

tenant's document means —

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

Section 80A(2) provides that this section applies if a residential tenancy agreement is terminated and a tenant's document is left at the premises.

Section 80A(3) requires a lessor to take reasonable care of a tenant's document for a period of 60 days after termination of the agreement. There is a penalty of a maximum fine of \$5,000 for a breach of this section.

Section 80A(4) provides that during the period of 60 days the lessor must take reasonable steps to notify the tenant that the document was left at the premises and as to when and from where the document may be collected. There is a penalty of a maximum fine of \$5,000 for a breach of this section.

Section 80A(5) provides that a person who has a lawful right to a document may reclaim it within 60 days after the day on which the agreement was terminated, providing they pay the reasonable costs, if any, incurred by the lessor in discharging their duties under this section in relation to the document.

Section 80A(6) provides that a lessor must give a document to a person who has a lawful right to a document and pays an amount equal to the reasonable costs incurred by the lessor. There is a penalty of a maximum fine of \$5,000 for a breach of this section.

Section 80A(7) provides that if the document is not claimed within 60 days after the day on which the agreement was terminated, the lessor may destroy or otherwise dispose of the document in accordance with this section.

Section 80A(8) provides that the lessor may apply to the court for an order for payment from the Rental Accommodation Account of an amount equal to the reasonable costs incurred by the lessor in discharging the duties imposed on the lessor under this section.

Section 80(9) provides that nothing in this section affects the operation of any other Act or law concerning the destruction or disposal of a document.

Clause 78

Section 80 amended

Recovery of possession of premises prohibited except by court order

Amends the penalty in section 80 to a maximum fine of \$20,000.

Clause 79

Section 81 replaced

Deletes section 81 and replaces it with new sections 81A, 81B and 81.

Mortgagee repossessions of rented properties

Inserts section 81A(1) to define the following terms for the purpose of this section:

notice to vacate, in relation to residential premises, means a written notice to vacate the premises;

specified date means a date, specified in a notice to vacate, by which the tenant is to vacate the residential premises.

Inserts sections 81A(2) and (3) to provide that if an agreement is terminated as a result of a mortgagee assuming the mortgage over the premises, a mortgagee must provide the former tenant with not less than 30 days notice to vacate the premises. The notice cannot be given by the mortgagee to the former tenant until the mortgagee has become entitled to recover possession of the premises. The notice must be in a form approved by the Minister.

Section 81A(4) provides that during this 30 day notice period, the former tenant is not required to pay any rent, fee or other charge to occupy the premises and, if any rent has been paid in advance for any part of this period, the former tenant is entitled to be repaid that amount of rent.

Section 81A(5) provides that a competent court may, on application by the tenant, order the repayment of any rent paid during the 30 day notice period or paid in advance in relation to the 30 day notice period.

Section 81A(6) permits the mortgagee, or any person acting on the mortgagee's behalf, to access the premises on a reasonable number of occasions to show the premises to prospective purchasers provided that the tenant is given reasonable notice and agrees to the date and time of the inspection.

Section 81A(7) provides that a mortgagee is not prohibited from: taking possession of the premises prior to the specified date if the tenant voluntarily vacates the premises prior to the specified date; changing the specified date for vacant possession to a later date by notice in writing given to the tenant; or entering into a new residential tenancy arrangement with the tenant in respect of the premises.

Section 81A(8) provides that this section applies to a tenant who is, immediately prior to the commencement of this provision, holding over after the termination of the residential tenancy agreement.

Section 81A(9) provides that this section applies irrespective of the terms of any court order made prior to the commencement of this Act, or despite the terms of any contract or other agreement.

Notice of proposed recovery of premises by person with superior title

Inserts section 81B which is based largely on the current section 81(1).

Section 81B(1) provides that this section applies where a person, (the plaintiff), brings proceedings in a competent court for the recovery of possession of the premises.

Section 81B(2) requires that the court must not give a judgment or make an order for possession of premises by a person (the plaintiff) with superior title unless it is satisfied that:

- (a) a tenant is in possession of the premises; and
- (b) if there is a tenant holding over, and the plaintiff is not the lessor under the residential tenancy agreement, that the tenant has had written notice, in a form approved by the Minister, of the proceedings not less than 30 days before the commencement of the proceedings.

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

Order for tenancy against person with superior title

Inserts new section 81 to provide that a tenant who is or was in possession of premises as a tenant under a residential tenancy agreement, or is holding over after the termination of a tenancy agreement, may apply to the court to seek an order vesting a tenancy with the tenant.

This application may be made to the court before which an application is pending for the recovery of possession of premises, or if the proceedings have concluded or possession has been recovered, the application may be made to a competent court.

The application must be made within a reasonable time after the recovery of possession of the residential premises.

On application from the tenant, the court may make an order vesting the tenancy in the applicant, and the plaintiff seeking possession of the premises, or having been awarded possession of the premises, shall be held to be the lessor. The court shall determine the terms and conditions of the tenancy agreement having regard to the circumstances of the case.

An application under this section or an order by the Court may be made even if the applicant has not been issued with a notice of the proceedings in accordance with section 81B or if the proceedings regarding recovery of possession have concluded or possession of the premises has been recovered by the party with superior title.

Clause 80

Section 82 amended

Contracting Out

Amends section 82 to prohibit any form of contracting out of the provisions of this Act.

Amends section 82 to increase the penalty to a maximum fine of \$10,000.

Clause 81 Section 85 amended

Service

Amends section 85(1)(b) by inserting a provision that service may be made to an address nominated by the tenant, or if an address is not nominated, then service may be made to the tenant's last known place of residence, employment or business.

Amends section 85(3) to provide that where the address of a person is unknown, notice is deemed to be given to that person if a copy of the notice is displayed in a copy of a newspaper circulating throughout the State or, if the court orders an alternative method of service, once that method of service has been carried out.

Amends sections 85(5) and 85(6) to reflect changes in terminology from "owner" to "lessor", "and from "agent of the owner" to "property manager of the residential premises".

Clause 82 Sections 86 and 87A inserted

Inserts a new section 86 and 87A into the Act.

Court may refer matter to Commissioner for investigation

Inserts section 86(1) to enable the court to refer a matter to the Commissioner for Consumer Protection for further investigation where the court has a suspicion that an offence under this Act has been committed, other than an offence to which the proceedings relate.

Section 86(2) requires the court to provide the Commissioner with all relevant documents or other records within the court's possession if referring a matter to the Commissioner.

Defence where lessor and property manager are both charged with the same offence

Inserts section 87A to provide that where a property manager and a lessor are both charged with the same offence, it is a defence for one of the parties to prove that he or she did not aid, abet, counsel or procure the act or omission of the other giving rise to the offence, and was not in any way knowingly involved in or party to the act or omission giving rise to the offence by the other.

Clause 83

Section 88A inserted

Infringement notices

Inserts section 88A to create the power for the Commissioner to appoint persons to issue infringement notices in relation to prescribed offences.

Inserts new section 88A(1) which defines authorised person for the purposes of subsections 88A(2), (3), (6) or (7) as follows:

authorised person means a person appointed under subsection (13) by the Commissioner to be an authorised person for the purposes of the subsection in which the term is used.

Section 88A(2) provides that infringement notices are to be issued within 21 days of an authorised person forming the opinion that an offence has been committed, and within 6 months of the alleged offence.

The infringement notice must be in the prescribed form and must advise the alleged offender:

- the details of the alleged offence;
- that the modified penalty may be paid within 28 days unless the party wishes the matter to be determined by a court; and
- to whom the modified penalty is to be paid.

Section 88A(4) requires that the modified penalty specified in the infringement notice to be the amount that was the prescribed modified penalty at the time the alleged offence is believed to have been committed.

Section 88A(5) requires that amount of the modified penalty for the offence cannot exceed 20% of the penalty that could be imposed by the court for the same offence.

Section 88A(6) provides that an appointed person, in a particular case, may extend the timeframe for the payment of a modified penalty, irrespective of whether the 28 day timeframe has elapsed.

Section 88A(7) provides that an infringement notice may be withdrawn within 60 days of the notice being issued, irrespective of whether the infringement notice has been paid or not. The notice informing the alleged offender of the withdrawal of the infringement notice must be in a prescribed form.

Section 88A(8) provides that if a modified penalty has been paid prior to the infringement notice being withdrawn, the modified penalty is to be refunded (s88A(8)).

Section 88A(9) provides that subsection (10) applies if the modified penalty has been paid within the required period and the infringement notice has not been withdrawn.

Section 88A(10) specifies that further proceedings in relation to the same offence cannot be brought against the person in the same way as such proceedings would be prohibited if the person had been convicted by a court and punished for the same offence.

Section 88A(11) provides that payment of a modified penalty is not to be taken as an admission of guilt for the purpose of any proceedings, whether criminal or civil.

Section 88A(12) provides that unless the modified penalty is to be refunded in accordance with subsection (8), the modified penalty is to be treated as if it were a penalty imposed by a court as a penalty for an offence.

Section 88A(13) provides for the Commissioner to appoint authorised persons, or classes of persons, to either issue infringement notices, receive payment of the modified penalty, extend the timeframe for payment of the modified penalty or withdraw the infringement notice. Once a person is appointed to issue an infringement notice, that same person cannot perform any of the three other functions.

Section 88A(14) requires the Commissioner to issue each authorised person with a certificate of their authorisation and each person must produce the certificate of authorisation if requested to do so by a person who has been issued or is about to be issued with an infringement notice.

Clause 84 Section 88 amended

Regulations

Amends section 88(2) by deleting subsections (b), (c) and (d). These subsections created the authority to prescribe in the regulations the following:

- the requirement to complete a property condition report at the commencement and conclusion of a tenancy;
- the requirement for the lessor to provide the tenant with specific information at the commencement of a tenancy; and
- the requirement to use a prescribed tenancy agreement.

These provisions are no longer required in the regulations as they have been included as provisions under the Act.

Amends section 88(a) by inserting the word ‘and’ at the end of the clause.

Amends section 88(e) by increasing the maximum penalty for breach of or non-compliance with the regulations from \$500 to \$5,000.

Clause 85 Section 90 amended

Review of the Act

Amends section 90 of the Act to correct a gender specific reference.

Clause 86 Part VII inserted

After section 90 the following Part is inserted:

Part VII – Savings and transitional provisions relating to the *Residential Tenancies Amendment Act 2011*

Division 1 – Contracting out

Savings in relation to contracting out of standard terms

Inserts new section 91 in relation to the savings and transitional provisions for existing agreements that contract out of standard terms of the Act.

Section 91 (1) defines “commencement day”, for the purposes of this section, as follows:

commencement day means the day on which the *Residential Tenancies Amendment Act 2011* section 80(3) comes into operation.

Section 91(2) provides that if a residential tenancy agreement that is in existence immediately prior to the commencement of this provision contracts out of a standard term of the Act as currently permitted by section 82(3) of the Act, then that residential tenancy agreement continues to have effect despite the deletion of section 82(3).

Division 2 – Security bonds held in AFI

Inserts sections 92 to 96, setting out the requirements for the transitional and savings period relating to the *Residential Tenancies Amendment Act 2011*.

Terms Used

Section 92 defines the following terms for the purpose of this Part:

authorised financial institution or **AFI** means —

- (a) an ADI (authorised deposit taking institution) as defined in the *Banking Act 1959* (Commonwealth) section 5; or
- (b) a bank constituted by a law of a State, a Territory or the Commonwealth; or
- (c) any other body,

that was prescribed, or that belongs to a class of bodies that was prescribed, for the purposes of the definition of that term under Schedule 1 clause 1 as in force immediately before the commencement day;

commencement day means the day on which the *Residential Tenancies Amendment Act 2011* section 87 comes into operation;

security bond held in an AFI means an amount of a security bond held in an AFI and that was so held immediately before the commencement day.

All security bonds to be transferred to the bond administrator after renewal of agreement or within 18 months

Section 93 requires that all existing security bonds held in an AFI are transferred to the bond administrator as soon as practicable after the renewal of a lease agreement, or in any case, not later than 18 months of the commencement of the Act. The security bond is to be paid either to the tenant, or to the Bond Administrator. If the security bond is paid to the Bond Administrator, then section 29(4)(b), (c) and (d) applies, with all of the necessary changes, to the payment.

Inserts a maximum penalty of a fine of \$5,000 for failing to transfer bonds to the bond administrator.

Requirements for AFI holding security bonds

Section 94(1) provides that an AFI must maintain the following records, in a form approved by the Minister, in relation to each security bond held by the AFI:

- (a) the name and number of the account in which the security bond is held in the AFI;
- (b) the amount of the security bond;
- (c) the date the security bond was paid into the account.

Section 94(2) provides that the AFI must hold a security bond on the following terms –

- (a) interest at a rate not less than the prescribed rate must accrue on the amount of the bond for the period during which it is held by the AFI;
- (b) the amount of interest accrued at the prescribed rate must be paid, at such times as are prescribed, to the Rental Accommodation Account and if interest is paid at a rate exceeding the prescribed rate, the amount of interest accrued above the prescribed rate must be paid, at such times as are prescribed, to the person who paid the bond;
- (c) the AFI may deduct from a payment to the credit of the Rental Accommodation Account or from a payment to a tenant under paragraph (b) an amount not exceeding the amount of the fee as is prescribed in respect of a payment of that kind;
- (d) the amount of the security bond must be paid out in accordance with section 96.

Section 94(3) provides that the Regulations may, for the purpose of the interest rate referred to in subsections (2)(a) and (b), prescribe an interest rate by reference to a market rate indicator that is specified in the Regulations.

Power of Commissioner to obtain information relating to AFI security bond accounts

Section 95(1) provides that a Commissioner may, where the security bond is held in an AFI, require the AFI to provide the Commissioner such information as the Commissioner requires in relation to an account in which the security bond is held, including information as to the balances of and amounts of interest paid on that account.

Section 95(2) provides that a requirement under section 95(1) must comply with the following:

- (a) must be given by notice in writing to the AFI; and
- (b) must specify the time at or within which the information is to be given; and
- (c) may, by its terms, require that the information be —
 - (i) given in writing; and
 - (ii) certified as correct by a person who is registered as an auditor, or taken to be registered as an auditor, under the *Corporations Act 2001*(Commonwealth) Part 9.2 and is specified in the requirement; and
 - (iii) given at or sent or delivered to any place specified in the requirement; and
 - (iv) sent or delivered by any means specified in the requirement; and
 - (v) given on oath or affirmation or by statutory declaration; and
- (d) must state that the AFI is required under this Act to give the information.

Section 95(3) provides that it is an offence, without reasonable excuse, for a person to refuse or fail to comply with a requirement under section 95(1) and inserts a penalty of a maximum fine of \$3,000.

Section 95(4) provides that it is an offence for a person to provide information in response to a requirement under section 95(1) that the person knows to be false or misleading in a material particular and inserts a penalty of a maximum fine of \$3,000.

Section 95(5) provides that it is a defence in proceedings for refusing or failing to comply with a requirement under section 95(3) for the person to show that:

- (a) the notice under subsection (2)(a) did not state that the person was required under this Act to give the information; or
- (b) the time specified in the requirement did not give the person sufficient notice to enable compliance with the requirement.

Section 95(6) provides that a person cannot fail or refuse to comply with a requirement under section 95(1) on the ground that the information may tend to incriminate the person or render the person liable to any penalty.

Section 95(7) provides that, despite section 95(6), information given under this section is not admissible in evidence in any proceedings against the person other than proceedings in respect of a person allegedly providing information that the person knows to be false or misleading in a material particular.

Disposal of security bond held in AFIs

Section 96(1) provides that where a security bond is held in an AFI in the name of a real estate agent under the *Real Estate and Business Agents Act 1978*, the real estate agent must, on receipt of an application in a form approved by the Minister and signed by all of the parties to which the residential tenancy agreement relates, or a copy of a Court order, pay from the account the amount of the bond to which the application or Court order relates, in accordance with the application or the order.

Section 96(2) provides that a real estate agent must pay an amount under section 96(1) within the period, if one is specified, in the application or Court order, or if a period of time is not stipulated, as soon as practicable upon receipt of the application or Court order, but in any case, no later than seven days upon receipt of the application or order.

Inserts a penalty of a maximum fine of \$5,000.

Section 96(3) provides that where an AFI holds a security bond in an account the names of the lessor and the tenant entitled “tenancy bond account”, the AFI must, on receipt of an application in a form approved by the Minister and signed by all of the parties to which the residential tenancy agreement relates, or a copy of a Court order made under Schedule 1 clause 8, pay from the account the amount of the bond to which the application or Court order relates, in accordance with the application or the order.

Section 96(4) provides that an application under either section 96(1)(a) or 96(3)(a) may relate to part of the amount of a security bond.

Section 96(5) provides that Schedule 1 clause 5(3) applies in respect of an application referred to in subsection (1) or (3) as if it were an application referred to in clause 5(1) of that Schedule.

Section 96(6) provides that Schedule 1 clause 5(4) applies, with all the necessary changes, in respect of a security bond held in an AFI.

Section 96(7) provides that the Regulations, made under section 88, may authorise the payment of unclaimed bonds monies to the Rental Accommodation Account.

Division 3 – Residential tenancy databases

Inserts a new section 97(1) which defines “commencement day” for the purpose of this section as follows:

commencement day means the day on which the *Residential Tenancies Amendment Act 2011* section 96 comes into operation.

Inserts a new section 97(2) providing that Part VIA Residential Tenancy Databases (Part 4 of the Bill), which contains the residential tenancy database provisions, does not come into effect for listings made prior to the commencement day until 3 months after the commencement day. These 3 months will provide more time for existing listings on residential tenancy databases to be reviewed and amended to ensure they are in compliance with the Act.

Section 97(3) provides that a term used in section 97(2) that is used in Part VIA has the same meaning in that subsection as it has in that Part.

Clause 87

Schedule 1 amended

Schedule 1 – Provisions relating to holding and disposal of security bonds and the income from bonds

[s.3, 7(3), 12, 29(4), (7), (8), 59D(6), 79(5), (6), (11) and 80A(8)]

Amends Schedule 1 of the Act in the following manner:

- the title of the Schedule is amended;
- the definition of authorised financial institution (AFI) is deleted as bonds may no longer be deposited with AFIs;
- the definition of bond administrator is deleted as this definition is now contained in section 3 of the Act;
- the definition of authorised agent is amended to correct for a gender specific reference and to insert a grammatical amendment;
- clause 2 is deleted as this range of options for the holding of bond monies no longer exist and the requirement to lodge all bond monies with the bond administrator is now addressed under clause 5A of Schedule 1;
- amends clause 3(2) by deleting “Account –“ and replacing this with “Account all of the following –“;
- deletes clause 3(2)(a) and 3(2)(aa) and replaces these with clauses 3(2)(a), 3(2)(ba), 3(2)(bb), 3(2)(bc) and 3(2)(bd) which require that all bond monies, all tenant compensation bonds and funds payable from the *Residential Parks (Long-stay Tenants) Act 2006* be credited to the Rental Accommodation Account;
- amends clause 3(2)(c) by deleting “Treasurer; and” and replacing this with “Treasurer;”;
- amends clause 3(3) by including the interest paid to the Rental Accommodation Account from AFIs holding security bonds and amounts payable to the Accounts under the *Residential Parks (Long-stay tenants) Act 2006* as amounts available to be paid from the Rental Accommodation Account for the purposes listed under this clause;
- amends clause 3(3)(a) to include power to pay a lessor any reasonable costs for the storage and destruction of a tenant’s abandoned document;
- amends clause 3(3)(ab) by deleting “bond agents” and replacing this with “authorised agent”;
- amends clause 3(3) to correct a gender specific reference and to make grammatical changes;

- inserts into clause 3(3) the power to fund not for profit organisations, one of whose main functions is the delivery of free or subsidised legal services from the Rental Accommodation Account on approval from the Minister;
- amends clause 3(4)(a) to delete reference to the Department and insert reference to the *Magistrates Court (Civil Proceedings) Act 2004*;
- amends clause 3(4)(b) to delete reference to the Consolidated Account and to provide that funds shall be credited to the operating funds of the Department and the department principally assisting in the administration of the *Magistrates Court (Civil Proceedings) Act 2004* respectively, as this will allow for the nett appropriation of these funds;
- amends clause 3(5) to correct a gender specific reference and to require the Treasurer to consult with the Minister responsible for this Act prior to directing that any or all surplus income of the Rental Accommodation Account be expended by the Housing Authority for the purpose of social housing premises in such manner as the Treasurer might specify;
- amends clause 4 to reflect the correct definition of the Rental Accommodation Account;
- amends clause 4(b) to correct a gender specific reference;
- amends clause 4(b) to delete reference to clause 2(1)(a) as this will no longer exist and to replace it with a reference to section 29(4)(b);
- amends clause 4(b)(ii) to correct grammar;
- inserts a new subclause 4(c) that requires the Bond Administrator to maintain records showing the name of the lessor, tenant and any residential premises in respect of which a tenant compensation bond has been paid and to pay out the amount of the bond in accordance with Division 3;
- inserts the word “and” after clause 4(b);
- renames Part B as “Division 2 – Security Bonds”;
- inserts clause 5A to replace the former clause 2(1)(a) to require that all bond monies be deposited with the bond administrator as soon as practicable but within 14 days of receipt of the bond monies and to provide for the bond money to be paid directly to the Bond Administrator or to an authorised agent of the Bond Administrator;
- amends clause 5(1) to correctly refer to the bond as a security bond and to correct gender specific references;
- amends clause 5(3) to replace the terms “party” and “his” with “tenant”;

- amends clause 5(4) to clarify that the Bond Administrator must be satisfied that six months has elapsed since the termination of a tenancy agreement and to provide that any part of the bond remaining after this time must be paid in accordance with the Regulations;
- deletes clause 6 and 7 as it will no longer be permissible for a real estate agent to hold a bond in their trust account or for a bond to be held in an authorised financial institute therefore these clauses are no longer required;
- deletes the heading to Schedule 1 Part D
- amends the heading to clause 8 to read “Court may determine disposal of security bond”;
- amends clause 8(3) to correct gender specific references;
- amends clause 8(4) to permit the court to extend the period for a respondent to a bond dispute to advise the court of an intention to dispute the application;
- amends clauses 8(4), 8(5) and 8(7)(b) to correct gender specific references;
- amends clause 8(4) to replace the term “a competent court’ with the term “the court”;
- amends clause 8(9) to delete reference to clause 7(4) as this clause will no longer exist;
- inserts clause 9 which provides that Division three applies where the Bond Administrator has been paid a tenant compensation bond in accordance with an order under section 59D(2);
- inserts clause 10 which requires the Bond Administrator, upon receipt of an application in a form approved by the Minister and signed by the tenant, along with a copy of an order of the Court made under section 15(2)(b), to pay an amount of tenant compensation bond to the tenant; and
- inserts clause 11 which requires the Bond Administrator, upon receipt of an application in a form approved by the Minister and signed by the lessor, along with a copy of an order of the Court made under section 59D(5), to pay an amount of tenant compensation bond to the lessor.

Clause 88

Various references to “agreement” amended

Provides a table containing the sections where a reference to “an agreement” is replaced with a reference to “a residential tenancy agreement”.

Clause 89 Various references to “owner” amended

Provides a table containing the sections and the headings contained within the Act where a reference to “owner” is replaced with a reference to “lessor”.

Part 3 – Amendments relating to terminating social housing tenancy agreements

Clause 90 Section 3 amended

Terms used in this act

Amends section 3 by inserting the following definitions in alphabetical order:

social housing premises has the meaning given in section 71A;

social housing provider has the meaning given in section 71A; and

social housing tenancy agreement has the meaning given in section 71A.

Clause 91 Section 60 amended

How residential tenancy agreements are terminated

Amends section 60(1)(c) to provide that a tenancy agreement may be terminated where a competent court terminates the agreement under sections 74, 75 and new section 75A. Section 75A relates to the termination of a social housing tenancy agreement due to objectionable behaviour.

Clause 92 Part V Division 3 inserted

Inserts Division 3 as follows:

Part V Division 3 – Special provisions about terminating social housing tenancy agreements

Subdivision 1 – Preliminary

Terms Used

Inserts section 71A which sets out definitions for the purpose of Division 3 as follows:

criteria means the criteria approved under section 71E;

Housing Authority means the Housing Authority referred to in the *Housing Act 1980* section 6(4);

Minister for Housing means the Minister to whom the administration of the *Housing Act 1980* is committed;

social housing premises means residential premises let by a social housing provider under a social housing tenancy agreement, but does not include any premises that are excluded by regulation from the ambit of this definition;

social housing provider means any of the following –
(a) the Housing Authority;
(b) a body or person prescribed, or of a class prescribed, for the purposes of this definition;

social housing tenancy agreement means a residential tenancy agreement in respect of social housing premises, but does not include any agreement that is excluded by regulation from the ambit of this definition.

The definition of social housing provider has been drafted to include an ability to prescribe a body or person, or a class of providers, as being a social housing provider. The provision has been drafted in this way to accommodate situations where the Housing Authority contracts out its social housing function to a third party, to enable the contracted social housing function to continue to operate under Part V Division 3 of the Act.

Application of Division

Inserts a new section 71B which provides that this Division does not limit the operation of other provisions of this Part of the Act in relation to residential tenancy agreements that are social housing tenancy agreements.

Subdivision 2 – Notice of termination where tenant not eligible for social housing premises

Notice of termination by lessor on ground that tenant not eligible for social housing premises

Inserts section 71C to provide that a lessor of social housing premises may give to the tenant a notice of termination of the social housing tenancy agreement if the lessor has determined, as a result of an assessment carried out under section 71D, that the tenant is no longer eligible to reside in the social housing premises or class of premises to which the tenancy agreement relates.

Assessment of tenants eligibility for social housing premises

Inserts section 71D to provide that in carrying out an assessment of whether a tenant is eligible to reside in the social housing premises, or to reside in a class of social housing premises to which an agreement relates, the lessor is to apply the criteria that is required to be established in accordance with section 71E. Section 71D also provides that a lessor is permitted to request the tenant to provide any information which is reasonably necessary for the lessor to assess the tenant's eligibility and that if the tenant refuses to provide such information, the lessor may determine without further inquiry that the tenant is not eligible to reside in the social housing premises.

If the social housing tenancy agreement creates a tenancy for a fixed term period, section 71D prohibits the carrying out of an assessment of the tenant's eligibility more than 6 month's prior to the conclusion of the fixed term period.

Criteria for assessing eligibility of tenants for social housing premises under section 71D

Inserts section 71E to provide for the Minister for Housing to approve criteria to determine a tenant's eligibility to reside in social housing premises and that this criterion must not relate to whether or not a tenant has complied with any terms of a residential tenancy agreement.

Section 71E provides that the eligibility criteria approved by the Minister under this section and used to determine a tenant's eligibility to continue to reside in social housing premises in accordance with section 71D may differ from the criteria applicable at the time of assessing the tenant's eligibility to commence residing in the social housing premises or a class of social housing premises.

Section 71E requires that the criteria approved by the Minister is to be made publicly available and is to be provided, upon request, free of charge to any tenant under a social housing tenancy agreement. Other parties may request a copy of the eligibility criteria and this criterion may be provided to those parties either free of charge or on payment of a reasonable cost incurred in copying the criteria.

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

Inserts section 71F to require the lessor to provide the tenant with a notice in writing advising the tenant of the intention to terminate the tenancy on the grounds that the tenant is no longer eligible to reside in the social housing premises. This notice must contain the particulars of why the tenant is considered no longer eligible to reside in the social housing premises, advise the tenant that they may apply to the lessor within 30 days of the notice seeking a review of the decision and advise that the tenant may appeal in writing or by oral presentation, providing reasons as to why the tenancy should not be terminated.

Section 71F also requires that if a tenant does apply for a review of the decision, the lessor must conduct a review in accordance with the procedures approved by the Minister for Housing for the purposes of this section and consider any representations made by the tenant. Upon completing the review, the lessor may issue a termination notice to the tenant in accordance with section 71C or may advise the tenant that there is no longer an intention to give the tenant a notice of termination of the tenancy agreement.

Time periods to be observed where notice of termination given under this Subdivision

Inserts section 71G to require that if a lessor proceeds to issue a notice to terminate a tenancy agreement in accordance with section 71C, the notice cannot be given before the end of the 30 day period in which a tenant may seek a review or at the conclusion of any such review, whichever is the later date.

Section 71G also requires that a notice of termination issued in accordance with section 71C cannot require vacant possession of the premises earlier than 60 days after the termination notice is issued, or, if the tenancy is a fixed term agreement, the later of 60 days after the notice issued or the date the tenancy ends.

Subdivision 3 – Notice of termination where tenant offered alternative social housing premises

Notice of termination by lessor where tenant offered alternative social housing premises

Inserts section 71H to provide that a lessor under a social housing tenancy agreement may issue a notice of termination of a tenancy agreement to the tenant on the grounds that the tenant has been offered alternative accommodation by the lessor.

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

Inserts section 71I to require the lessor to provide the tenant with a notice of intention to terminate the tenancy on the grounds that the tenant has been offered alternative social housing premises. The lessor may make the offer to enter into a new social housing tenancy agreement and give notice of the decision at the same time.

This notice must contain the particulars of why the lessor wishes the tenant to move to alternative premises, advise the tenant that he or she may apply to the lessor within 30 days of the notice seeking a review of the decision and advise that the tenant may appeal in writing or by oral presentation, providing reasons as to why the tenancy agreement should not be terminated.

Section 71I also requires that if a tenant does apply for a review of the decision, the lessor must conduct a review in accordance with procedures approved by the Minister for Housing for the purposes of this section and must consider any representations made by the tenant. Upon completing the review, the lessor may issue a termination notice to the tenant in accordance with section 71H, advise the tenant in writing that the lessor no longer intends to proceed to terminate the existing tenancy agreement or may make an offer of a further alternative social housing premise for the tenant to consider. The tenant has the same rights of review as detailed above in respect of a second offer of alternative social housing premises but does not have any rights of review in respect of any offers beyond the first two offers.

Time periods to be observed where notice of termination given under this Subdivision

Inserts section 71J to require that if a lessor proceeds to issue a notice to terminate a tenancy agreement in accordance with section 71H, the notice cannot be given before the end of the 30 day period in which a tenant may seek a review or at the conclusion of the review, whichever is the later date. However, if the lessor and the tenant enter into a social housing tenancy agreement in respect of alternative premises before the end of the review or the 30 day notice period, the termination notice for the former premises may be issued on or after the date the parties enter into the agreement for the alternative premises.

Section 71J(3) requires that a notice of termination issued in accordance with section 71H cannot require vacant possession of the premises earlier than 60 days after the termination notice is issued, unless the tenant has agreed to an earlier date.

Section 71J(4) requires that alternative premises must be available for occupation by the tenant no less than seven days prior to the date on which the tenant is required by notice to deliver up vacant possession of the former premises. If the alternative premises are not available at this time, the notice to terminate the tenancy is ineffective.

Section 71J(5) provides that in the case of a fixed term tenancy agreement, the notice of termination is not ineffective merely because a day earlier than the day on which the fixed term ends is specified as the day on which vacant possession is to be delivered up to the lessor.

Clause 93

Section 71 amended

Application by owner for termination and order for possession

Amends section 71(2)(b) by excluding from the operation of this subsection termination notices issued by a social housing provider in respect of a tenant no longer being eligible for social housing premises or the tenant being offered alternative social housing premises.

Amends section 71(2)(b) to insert a grammatical change.

Inserts section 71(2)(c) which requires the court to be satisfied of matters outlined in subsection (3A) before issuing a notice of termination and an order for possession.

Inserts new section 71(3A), which requires the court to be satisfied that either the social housing tenant is no longer eligible to reside in social housing per the eligibility criteria established under section 71E, or that the tenant has been offered alternative social housing that is available for occupation by the tenant, whichever consideration is relevant to the application before the court.

Inserts section 71(3B) which prohibits the court from making an order terminating the tenancy unless the court is satisfied that the social housing provider has complied with all procedural requirements with regards to the giving of notice and conducting a review.

Inserts section 71(3C) to provide that, without limiting what the court is to have regard to when considering an application to terminate a social housing tenancy agreement, the court must also have regard to such following matters as may be relevant:

- any serious adverse effects the tenancy has had on neighbouring residents or other persons;
- whether any breach of the residential tenancy agreement was a serious one, and whether, given the behaviour or likely behaviour of the tenant, a failure to terminate the agreement would subject, or continue to subject, neighbouring residents or any persons or property to unreasonable risk;
- the lessor's responsibility to its other tenants;
- whether the tenant, wilfully or otherwise, is or has been in breach of an order of the court; and

- the history of the tenancy concerned, including, if the tenant is a tenant under a social housing tenancy agreement, any prior tenancy of the tenant arising under any such agreement.

Clause 94

Section 73A inserted

Notice of termination not required in certain cases

Inserts clause 73A to confirm that an application to the court for an order terminating the tenancy agreement may be made without first having issued the other party with a notice of termination in the following cases:

- section 73 – termination of agreement where tenant causing serious damage or injury;
- section 74 – termination of agreement where lessor or tenant would otherwise suffer undue hardship;
- section 75A – termination of social housing tenancy agreement due to objectionable behaviour; and
- section 75 – termination of agreement for breach by lessor.

Clause 95

Section 75A inserted

Termination of social housing tenancy agreement due to objectionable behaviour

Inserts section 75A to provide that a court may terminate a social housing tenancy agreement upon application by a social housing provider if it is satisfied that the tenant has:

- used the social housing premises, or caused or permitted the social housing premises to be used, for an illegal purpose; or
- caused or permitted a nuisance by the use of the social housing premises; or
- interfered, or caused or permitted any interference, with the reasonable peace, comfort or privacy of any person who resides in the immediate vicinity of the premises.

An interference with the reasonable peace, comfort or privacy of any person who resides in the immediate vicinity of the premises is intended to be less than a nuisance at law, but more than a mere annoyance or inconvenience when viewed objectively.

The court must be satisfied that the tenant's behaviour justifies terminating the agreement.

Section 75A(2) enables the court to make such other orders or give such other directions as the court thinks fit, including making an order under section 15 of the Act. Section 15 of the Act permits the court, amongst other things, to make orders restraining action in breach of the agreement or requiring action in performance of the agreement.

Section 75A(3) provides that, in determining whether the behaviour justifies terminating the agreement or in making an order under subsection (2), the court may have regard to whether the behaviour was recurrent and if so, how frequently the behaviour occurred, and the seriousness of the behaviour. The court, however, is not limited to considering only these matters (section 75A(4)).

Section 75A(5) requires the court, when making an order terminating the social housing tenancy agreement, to also make an order for possession of the premises specifying a date that the court considers, in the circumstances, to be appropriate from which the orders are to operate.

Section 75A(6) provides that for the purposes of section 16 of the Act, an order made under this provision will be taken to be an order under section 15(2) of the Act. The penalty for failing to comply with an order under section 15(2) of the Act is a maximum fine of \$10,000.

Part 4 – Amendments relating to residential tenancy databases

Clause 96

Part VIA inserted

Inserts new Part VIA, 82A to 82K, into the Act to introduce Residential Tenancy Database model provisions developed and endorsed by the Ministerial Council on Consumer Affairs.

Division 1 – Preliminary

Terms used in this Part

Inserts new section 82A which sets out the terms used for the purpose of this part as follows:

agent of a lessor, means a person employed, or otherwise authorised, by the lessor to act as the lessor's agent.

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

database operator means an entity that operates a residential tenancy database.

inaccurate, in relation to personal information in a residential tenancy database is defined to include information that is inaccurate because:

- (a) the information indicates that the person owes a lessor an amount more than the security bond for a residential tenancy agreement; and
- (b) the amount owed was paid to the lessor more than three months after it became due.

If an amount owing is paid to the lessor within three months after it became due, the listing would then be out-of-date.

list, personal information about a person in a residential tenancy database -

(a) means –

- (i) includes to enter the personal information into the database; or
- (ii) to give the personal information to a database operator or someone else for entry into the database;

and

(b) includes to amend personal information about a person in the database to include additional personal information about the person.

out-of-date, in relation to personal information in a residential tenancy database means that the information is no longer accurate because –

- (a) the listing was made on the basis that the person owes the lessor an amount that is more than the bond but the amount owed was paid to the lessor within three months of it becoming due; or
- (b) the listing was made on the basis that a court has made an order terminating the residential tenancy agreement but the order has been set aside on appeal.

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

residential premises includes a long-stay site in a residential park as those terms are defined in the *Residential Parks (Long-stay Tenants) Act 2006 (WA)*.

The *Residential Parks (Long-stay Tenants) Act 2006 (WA)* has been referred to in the definition to ensure that the database provisions also apply to tenancy agreements arising under this Act.

residential tenancy agreement includes a long-stay agreement as defined in the *Residential Parks (Long-stay Tenants) Act 2006 (WA)*.

residential tenancy database means a database –

(a) containing personal information –

- (i) relating to, or arising from, the occupation of residential premises under a residential tenancy agreement; or
- (ii) entered into the database for reasons relating to, or arising from, the occupation of residential premises under a residential tenancy agreement; and

(b) the purpose of which is for use by lessors or agents of lessors for checking a person's tenancy history for deciding whether a residential tenancy agreement should be entered into with the person.

tenant includes a long-stay tenant as defined in the *Residential Parks (Long-stay Tenants) Act 2006 (WA)*.

Application of Part

Inserts new section 82B which clarifies the new Part VIA does not apply to a residential tenancy database kept by an entity (including State or Territory government departments) for use only by that entity or its officers, employees or agents.

Division 2 – Tenancy database information

Notice of usual use of database

Inserts new section 82C(1) which provides that this section applies if a person (the applicant) makes an application to enter into a residential tenancy agreement, and the lessor, or the lessor's agent, usually uses one or more databases for deciding whether a residential tenancy agreement should be entered into with a person.

Inserts new section 82C(2) which provides that when an application is made the lessor or agent must give the applicant a written notice stating:

- (a) the name of each residential tenancy database that the lessor usually uses, or may use, for deciding whether a tenancy agreement should be entered into with a person;
- (b) that the reason the lessor uses the residential tenancy database is for checking an applicant's tenancy history; and
- (c) for each residential tenancy database usually used by the lessor or which may be used, how persons may contact the database operator and obtain information.

Inserts a penalty of a maximum fine of \$5 000 for failure to comply with this subsection.

Inserts new section 82C(3) which requires that an applicant must be given the required notice in respect of each database used by the lessor or the lessor's agent, whether or not the lessor or the lessor's agent intends to use a particular database on this occasion for deciding whether a residential tenancy agreement should be entered into with the applicant.

Inserts new section 82C(4) which provides that the lessor or agent is not required to give the written notice mentioned in section 82C(2) if written notice containing the matters referred to section 82C(2) was given to the applicant not more than seven days before the present application was made. For example, if the applicant receives the notice at the time of collecting the application form for the premises, and returns the completed application to the lessor or the lessor's agent within seven days from this date, the lessor or the lessor's agent is not required to provide an additional copy of the required notice to the applicant when the application is lodged.

Notice of listing if database used

Inserts new section 82D(1) which provides that this section applies if:

- (a) a person (the applicant) applies to a lessor or lessor's agent to enter into a tenancy agreement; and
- (b) the lessor, or the lessor's agent, uses a residential tenancy database for checking whether personal information about an applicant is in the database; and
- (c) personal information about the applicant is in the database.

Inserts new section 82D(2) which provides that the lessor must, as soon as possible but within seven days of using the database, give the applicant a written notice stating –

- (a) the name of the database; and
- (b) that personal information about the applicant is in the database; and
- (c) the name of each person who listed the personal information in the database; and
- (d) how and in what circumstances the applicant can have the personal information removed or amended under this Part.

Inserts a penalty of a maximum fine of \$5 000.

Inserts new section 82D(3) which provides that the written notice under section 82D(2)(c) only needs to include the name of a person who made the listing if the tenancy database identifies the person who listed the personal information in the database.

Listing can be made only for particular breaches by particular persons

Inserts new section 82E(1) which requires that the lessor, lessor's agent or database operator must not list personal information about a person in a residential tenancy database unless -

- (a) the person was named as a tenant in a tenancy agreement that has ended; and
 - (b) the person has breached the tenancy agreement; and
 - (c) because of the breach, either –
 - (i) the person owes the lessor an amount more than the security bond for the agreement; or
 - (ii) a court has made an order terminating the residential tenancy agreement;
- and
- (d) the personal information -
 - (i) relates only to the breach; and
 - (ii) is accurate, complete and unambiguous.

Inserts a penalty of a maximum fine of \$5 000 for failure to comply with this subsection.

Section 82E(2) requires that, without limiting subsection (1)(d)(ii) with respect to the personal information being accurate, complete and unambiguous, the personal information must indicate the nature of the breach.

Further restriction on listing

Inserts new section 82F(1) which provides that a lessor, lessor's agent or database operator must not list personal information unless the lessor, agent or operator –

- (a) has, without charging a fee -
 - (i) given the person a copy of the personal information; or
 - (ii) taken other reasonable steps to disclose the personal information to the person; and
- (b) has given the person at least 14 days to review the personal information and make submissions –
 - (i) objecting to its entry into the database; or
 - (ii) its accuracy, completeness and clarity.

Section 82F(1)(c) requires that the lessor, lessor's agent or database operator must consider any submissions made.

Inserts a penalty of a maximum fine of \$5 000 for failing to comply with this sub-section.

Section 82F(2) provides that the requirement to provide the tenant with a copy of the personal information that is proposed to be listed on a database does not apply if the lessor, lessor's agent or database operator cannot locate the person after making reasonable enquiries.

Section 82F(3) provides that the obligation to provide 14 days for a person to review personal information and make submissions before the listing is made, and to consider those submissions, does not apply to information contained in publicly available court or tribunal records, or to a listing involving only an amendment of personal information made under section 82G.

Ensuring quality of listing – lessor's or agent's obligation

Inserts new section 82G(1) which provides that section 82G applies if a lessor or lessor's agent who lists personal information in tenancy database becomes aware that the information is inaccurate, incomplete, ambiguous or out of date.

Section 82G(2) provides that the lessor must, within seven days, give written notice to the database operator:

- (a) if the information is inaccurate, incomplete or ambiguous —
 - (i) that the information is inaccurate, incomplete or ambiguous; and
 - (ii) how the information must be amended so that it is no longer inaccurate, incomplete or ambiguous;

- (b) if the information is out-of-date — that the information is out-of-date and must be removed.

Inserts a penalty of a maximum fine of \$5 000 for failure to comply with this subsection.

Inserts new section 82G(3) which requires that the lessor or lessor's agent must keep a copy of the written notice for one year after it was given under section 82G(2).

Inserts a penalty of a maximum fine of \$5 000 for failure to comply with this subsection.

Ensuring quality of information – database operator's obligation

Inserts new section 82H(1) which provides that section 82H applies if a lessor who has listed personal information in a residential tenancy database gives the database operator a written notice stating that the personal information must be –

- amended in a stated way to make it accurate, complete or unambiguous; or

- removed.

Inserts new section 82H(2) which requires that the database operator must amend the personal information in the stated way or remove the personal information within 14 days after the operator is given the written notice.

Inserts a penalty of a maximum fine of \$5,000 for failure to comply with this subsection.

Providing copy of personal information listed

Inserts new section 82I which requires a lessor or lessor's agent who has listed personal information about a person in a residential tenancy database, if asked in writing by the person, to give the person a copy of the information within 14 days of the request being made.

Inserts a penalty of a maximum fine of \$5,000 for failure to comply with this subsection.

Inserts a new section 82I(2) which requires a database operator, if asked in writing by a person whose personal information is in their residential tenancy database, to give the person a copy of the information within 14 days after the request is made.

Inserts a penalty of a maximum fine of \$5,000 for failure to comply with this subsection.

Inserts new section 82I(3) which provides that if a lessor, lessor's agent or database operator charges a fee for giving personal information under subsection (1) or (2), the requirement to provide the requested information within 14 days only applies once the fee has been paid.

Section 82I(4) provides that any fee charged by a lessor, lessor's agent or a database operator for giving personal information under subsection (1) or (2) must not be excessive, and not apply to lodging a request for accessing the information. These provisions are consistent with the National Privacy Principles stated in the *Privacy Act 1988* (Commonwealth).

Disputes about listings

Inserts new section 82J(1) to enable a person to apply to a competent court for an order under this section if personal information about the person has been listed in a residential tenancy database.

Section 82J(2) provides that a court may make an order if it is satisfied that:

- (a) the residential tenancy database includes personal information about the applicant that is inaccurate, incomplete, ambiguous or out-of-date; or

- (b) the inclusion of the applicant's name or other personal information about the applicant is unjust in the circumstances, having regard to all of the following –
- (i) the reason for the listing;
 - (ii) the tenant's involvement in any acts or omissions giving rise to the listing;
 - (iii) any adverse consequences suffered, or likely to be suffered, by the tenant because of the listing;
 - (iv) any other relevant matter.

Section 82J(2) provides that the court may order personal information about a person to be wholly or partly removed, amended in a stated way or not listed in a residential tenancy database.

Section 82J(3) provides that the court must give a copy of the order to the lessor, tenant and database operator.

Section 82J(4) provides that if the court makes an order directing a person other than a lessor or agent to remove, amend or not list information in a residential tenancy database, the court must give a copy of the order to the person.

Keeping personal information listed

Inserts new section 82K(1) which defines "national privacy principles" for the purposes of this section as the principles stated in the *Privacy Act 1988* (Commonwealth).

Section 82K(2) provides that a database operator must not keep personal information about a particular person in the database for longer than:

- (a) 3 years; or
- (b) if under the national privacy principles, the operator of the database is required to remove the personal information before the end of the three year period mentioned in paragraph (a) - the period ending when the information must be removed under the national privacy principles.

Inserts a penalty of a maximum fine of \$5,000 for failure to comply with this subsection.

Section 82K(3) provides that a database operator may keep a person's name in the operator's residential tenancy database for longer than the period stated in subsection (2)(a) or (b) if –

- (a) other personal information about the person in the database is attached to the name; and
- (b) the other personal information is not required to be removed under subsection (2) or another law.

Section 82K(4) provides that this does not limit the operation of another provision of Part VIA or a provision of another law that requires the removal of the personal information.

Part 5 – Amendments to other Acts

Division 1 – *Division of Uncollected Goods Act 1970* amended

Clause 97 Act amended

Amends the *Division of Uncollected Goods Act 1970*.

Clause 98 Schedule amended

Amends the schedule to delete reference to section 79 of the *Residential Tenancies Act 1987* and replaces this with reference to section 79 and 80A.

This is to accommodate the new section 80A that deals with abandoned documents.

Division 2 – *Housing Act 1980* amended

Clause 99 Act amended

Amends the *Housing Act 1980*.

Clause 100 Section 62G amended

Amends sections 62G(1)(b) and 62G(2) by replacing “owner” with “lessor”.

Division 3 – Magistrates Court (Civil Proceedings) Act 2004 amended

Clause 101 Act amended

Amends the *Magistrates Court (Civil Proceedings) Act 2004*.

Clause 102 Section 7 amended

Amends the definition of **trader** in section 7(1) by replacing “an owner” with “a lessor”.

Division 4 – Rates and Charges (Rebates and Deferments) Act 1992 amended

Clause 103 Act Amended

Amends the *Rates and Charges (Rebates and Deferments) Act 1992*.

Clause 104 Section 29B amended

Amends section 29B(1) by deleting the definition of **owner** and replacing this with the following:

lessor, in relation to land, has the meaning given in the *Residential Tenancies Act 1987* section 3;

Amends section 29B(3) by replacing “the owner” with “the lessor”.

Division 5 – Residential Parks (Long-stay Tenants) Act 2006 amended

Clause 105 Act Amended

Amends the *Residential Parks (Long-stay Tenants) Act 2006*.

Clause 106 Section 22 amended

Amends section 22(1)(a) by replacing “a bond agent; or” with “an authorised agent as defined in the *Residential Tenancies Act 1987* Schedule 1 clause 1; or”.

Deletes section 22(2)(a) and replaces it with:

“(a) an account in the name of the agent entitled ‘tenancy bond trust account’, used for the purpose of holding a security bond under this subsection or the *Residential Tenancies Act 1987* and for no other purpose; or”.

Clause 107 Glossary amended

Amends the Glossary by deleting the definitions for:

authorised financial institution
bond administrator
bond agent
Rental Accommodation Fund

and inserts into the Glossary the following definitions in alphabetical order:

authorised financial institution has the meaning given in the *Residential Tenancies Act 1987* section 92;

bond administrator means the Commissioner as defined in the *Fair Trading Act 2010* section 6;

Rental Accommodation Account means the Rental Accommodation Account established under the *Residential Tenancies Act 1987* Schedule 1 clause 3;

Clause 108 Various references to “Fund” changed to “Account”

Provides a table containing the sections in the *Residential Parks (Long-stay Tenants) Act 2006* where “Fund” has been replaced with “Account”.