

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

### Overview of Bill

The objects of this Bill are as follows:

- (a) to provide for the rights and obligations of landlords and tenants and for rental bonds and related matters,
- (b) to repeal and re-enact, with modifications, the provisions of the Residential Tenancies Act 1987 and the Landlord and Tenant (Rental Bonds) Act 1977,
- (c) to make consequential amendments to other Acts.

### Outline of provisions

#### Part 1 Preliminary

##### Division 1 General

Division 1 of Part 1 (sections 1–5) of the proposed Act provides for the following matters:

- (a) the name of the proposed Act,

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- (b) the commencement of the proposed Act on a day or days to be appointed by proclamation,

- (c) the meaning of words and expressions used in the proposed Act,

- (d) that the proposed Act is to bind the Crown,

- (e) the repeal of the Residential Tenancies Act 1987 (the 1987 Act) and the Landlord and Tenant (Rental Bonds) Act 1977 (the 1977 Act).

##### Division 2 Application of Act

Division 2 of Part 1 (sections 6–12) of the proposed Act re-enacts sections 5–7 of the 1987 Act with the following additions and modifications:

- (a) the proposed Act will not apply to premises used as a backpackers' hostel or to serviced apartments,

- (b) the exemption from the proposed Act for clubs is limited to parts of clubs used for temporary accommodation,

- (c) the proposed Act will not apply to the following additional kinds of agreements:

- (i) agreements under which a person resides in refuge or crisis accommodation of a kind prescribed by the regulations,

- (ii) leases and licences under the Crown Lands Act 1989, the Western Lands Act 1901 and the Crown Lands (Continued Tenures) Act 1989,

- (iii) an agreement having a term (including any option to extend) of 99 years or more,

- (d) the existing exemption from the proposed Act for holiday accommodation will now apply to leases for periods of up to 3 months rather than 2 months,

- (e) the proposed Act will apply to agreements or arrangements under which persons occupy premises as a residence in return for, or as part of remuneration for, carrying out work in connection with the premises or for employment,

- (f) it is made clear that a person in a shared household who is not named as a tenant in a residential tenancy agreement will not be considered to be a tenant unless the tenant transfers a tenancy to the person or the person is a sub-tenant under a written residential tenancy agreement with the tenant,

- (g) the Director-General of the Department of Services, Technology and Administration (the Director-General) or any other person may apply to the Consumer, Trader and Tenancy Tribunal (the Tribunal) for an order declaring that a specified agreement or premises is or are, or is or are not, a residential tenancy agreement or premises to which the proposed Act applies.

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#### Part 2 Residential tenancy agreements

Part 2 (sections 13–22) of the proposed Act re-enacts Part 2 of the 1987 Act with the following additions and modifications:

- (a) all the provisions affecting the definition of a residential tenancy agreement are now included in one section,
- (b) if a residential tenancy agreement is of a kind for which a standard form is prescribed, it will be taken to include the terms of the standard form,
- (c) a landlord will be required to ensure that the residential tenancy agreement is in writing. A failure to do so will result in the landlord being prohibited from increasing rent during the first 6 months of a tenancy and losing the right to terminate the agreement without any grounds during that period,
- (d) a tenant will be able to apply to the Tribunal for an order that the landlord prepare and enter into a written residential tenancy agreement,
- (e) the proposed Act prohibits specified kinds of terms from being included in residential tenancy agreements (such as terms requiring that the tenant take out insurance and premium and penalty rent terms) and enables regulations to be made prohibiting other specified terms,
- (f) terms that are mandatory under the proposed Act may not be included or may be varied, and prohibited terms may be included, in residential tenancy agreements with fixed terms of 20 years or more, subject to the right of a tenant to seek an order by the Tribunal that mandatory terms are included or prohibited terms are not included (with or without variation),
- (g) a landlord or tenant will be able to apply to the Tribunal for confirmation as to whether an additional term in a residential tenancy agreement is void or partly void for inconsistency with the proposed Act or a standard agreement,
- (h) a landlord will be required to ensure that the residential tenancy agreement contains any terms required to be included by the proposed Act and does not contain any prohibited terms and will be guilty of an offence if the landlord fails to do so,
- (i) special provisions relating to social housing tenancies have been re-located to Part 7,
- (j) provisions relating to applications to the Tribunal have been re-located to Part 9.

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#### Part 3 Rights and obligations of landlords and tenants

##### Division 1 Pre-agreement matters

Division 1 of Part 3 (sections 23–31) of the proposed Act contains the following additional provisions relating to matters occurring before or at the time a residential tenancy agreement is entered into:

- (a) the amounts that may be charged before or when entering into a residential tenancy agreement now include a holding fee. The provision in the 1987 Act which permitted other fees to be prescribed has been omitted as has the prohibition on reservation fees,
- (b) a tenant may no longer be required to pay any costs of the preparation of a written residential tenancy agreement,
- (c) a holding fee will only be payable after a landlord has approved the tenant's application for tenancy of the residential premises. A landlord who accepts a holding fee will be prohibited from letting the residential premises to another person for 7 days unless the tenant notifies the landlord that the tenant no longer wishes to enter into the agreement. The holding fee must be paid

towards rent if the agreement is entered into,

(d) it will be an offence for a landlord or landlord's agent to induce a tenant to enter into a residential tenancy agreement by a statement, representation or promise that the landlord or agent knows is false or misleading or by knowingly concealing a material fact,

(e) a landlord or landlord's agent will be required to disclose any proposed sale or mortgagee action affecting the residential premises and to give the tenant an information statement in the form approved by the Director-General before the tenant enters into the residential tenancy agreement,

(f) the requirements for condition reports, formerly contained in the regulations under the 1987 Act, have been included in the proposed Act together with a provision that makes a condition report signed by both parties evidence of the state of repair or condition of premises at the date of the report,

(g) applications may be made to the Tribunal about disputes relating to holding fees and condition reports.

#### Division 2 Rent and other payments

Division 2 of Part 3 (sections 32–48) of the proposed Act re-enacts section 19 and Part 4 of the 1987 Act with the following additions and modifications:

(a) the provision for up to 1 month's rent to be payable in advance if the rent is more than an amount prescribed by the regulations has been omitted,

(b) a tenant must be permitted to pay rent by at least one means for which the tenant does not incur a cost (other than bank fees or other account fees usually payable by the tenant) and that is reasonably available to the tenant,

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(c) a landlord is required to accept rent offered by a tenant after the landlord has given a termination notice on the ground of failure to pay rent if the tenant has not vacated the residential premises,

(d) a rent receipt for rent paid by cheque must be made available for collection by the tenant or posted to the residential premises,

(e) the form of a rent record is to be prescribed by the regulations under the proposed Act,

(f) a landlord or landlord's agent will be required to provide a written statement setting out particulars of the rent record within 7 days of a written request being made by the tenant,

(g) additional utility charges will be payable by the tenant, including charges for pumping out a septic system used for the residential premises and excess garbage,

(h) the tenant will be liable to pay water usage charges for residential premises if the premises are separately metered or water is delivered to premises not connected to a water supply service by vehicle and the premises contain water efficiency measures prescribed by the regulations under the proposed Act. The landlord must give the tenant 21 days to pay water usage charges and must also give the tenant evidence of the cost of the water used by the tenant. The tenant will not be required to pay water usage charges if the landlord fails to request payment within 3 months of the issue of the relevant bill and the tenant is not liable for late payment fees,

(i) the utility charges and rates and taxes payable by a landlord are expressly stated to include specified charges, including charges (other than water usage charges) in connection with a water supply service to separately metered residential premises,

(j) the rent under a residential tenancy agreement with a fixed term of less than 2 years may only be increased during the fixed term in accordance with the

agreement. The rent under residential tenancy agreements with fixed terms of more than 2 years may be increased during the fixed term even if the agreement does not set out the amount of or method for determining the increase, but such an increase must not be made more than once in any period of 12 months,

(k) a landlord will be required to repay excess rent to a tenant or former tenant within 14 days of a written request to do so by the tenant or former tenant. An application must be made to the Tribunal within the period prescribed by the regulations,

(l) a tenant will be required to repay to the landlord the cost of replacing rent deposit books or rent cards lost by the tenant and of any bank fees charged because of funds of the tenant not being available for rent payment,

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(m) the Tribunal is prohibited from taking into account the income of a tenant or the tenant's ability to afford a rent increase or rent when determining an application to determine whether a rent increase or rent is excessive,

(n) provisions relating to premium rent terms and penalty rent have been replaced by section 19 which prohibits such terms,

(o) the offence of wilfully contravening or failing to comply with a rent order is now covered by the offence under section 52 of the Consumer, Trader and Tenancy Tribunal Act 2001 of failing to comply with an order of the Tribunal.

Division 3 Occupation and use of residential premises

Division 3 of Part 3 (sections 49–54) of the proposed Act re-enacts sections 20–23, 25, 26 and 30 of the 1987 Act with the following additions and modifications:

(a) the following additional obligations are imposed on a landlord:

(i) to take all reasonable steps to ensure that the landlord's other neighbouring tenants do not interfere with the reasonable peace, comfort or privacy of the tenant in using the residential premises (this obligation also applies to the landlord's agent),

(ii) not to interfere with the supply of gas, electricity, water, telecommunications services or other services to the residential premises unless it is necessary to avoid danger to a person or to enable maintenance or repairs,

(iii) to comply with the landlord's statutory obligations relating to the health or safety of the residential premises,

(b) additional obligations have been imposed on a tenant, on giving vacant possession of residential premises, to remove his or her goods, leave the premises in a reasonable state of cleanliness, remove or arrange for the removal of rubbish and to return all keys and security or pass cards or other similar devices for the premises,

(c) a landlord will be required to give the tenant written notice of any intention to sell the residential premises at least 14 days before the residential premises are first made available for inspection by prospective purchasers and to make all reasonable efforts to agree with the tenant as to the days and times for inspection of the premises by prospective purchasers. The tenant must not unreasonably refuse to agree to days and times for such inspections. There will be a limit of 2 inspections per week.

Division 4 Landlord's rights to enter residential premises

Division 4 of Part 3 (sections 55–61) of the proposed Act re-enacts section 24 of the 1987 Act with the following additions and modifications:

(a) the grounds on which a landlord may enter the residential premises without the consent of the tenant are to be extended to permit entry if the landlord has

reasonable cause for serious concern about the health or safety of the tenant or  
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any other person on the residential premises or to value the property or to show the premises to prospective purchasers (but only with not less than 48 hours notice),

(b) the tenant has an express duty to give persons access to the residential premises if they are authorised to have access under the Division,

(c) the Division contains the powers of the Tribunal to order access to be given to the residential premises, to limit access and to order compensation for damage caused by any person who is given access,

(d) the landlord may apply to the Tribunal for an order authorising the landlord or other person to enter residential premises for the purpose of showing the premises to prospective purchasers on a periodic basis or to determine whether the tenant has breached a term of the residential tenancy agreement.

Division 5 Repairs to premises

Division 5 of Part 3 (sections 62–65) of the proposed Act re-enacts sections 25 (1) (b) and 28 of the 1987 Act with the following additions and modifications:

(a) it is made clear that the landlord's obligation to provide and maintain the residential premises in a reasonable state of repair applies even if the tenant had notice of the state of disrepair before entering into occupation but does not apply to any disrepair caused by a breach by the tenant,

(b) work needed to repair a broken or malfunctioning appliance, fitting or fixture that uses water or supplies water and is causing substantial amounts of water to be wasted, and work to repair a breakdown in a cooling system, have been included in the list of urgent repairs for which the landlord is responsible for or is required to reimburse the tenant,

(c) the tenant may apply to the Tribunal for an order that the landlord carry out specified repairs or reimburse the tenant for the cost of urgent repairs. An order for carrying out specified repairs may only be granted if the landlord has breached the obligation to maintain premises in a reasonable state of repair and the landlord had notice of the need for repair, or ought reasonably to have known of the need for the repair, and failed to act with reasonable diligence to have the repair carried out,

(d) if any such order is made, the Tribunal may also order that all or part of the rent be paid into the Tribunal until the repair or reimbursement order has been complied with.

Division 6 Alterations and additions to residential premises

Division 6 of Part 3 (sections 66–69) of the proposed Act re-enacts section 27 of the 1987 Act with the following additions and modifications:

(a) a landlord must not unreasonably withhold consent to an alteration, addition or renovation to the residential premises by the tenant if it is of a minor nature.

Circumstances in which the Tribunal may decide that refusal of consent is

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reasonable (such as structural changes or if the work involves external or internal painting) are included,

(b) any fixture installed by or on behalf of a tenant or any alteration, addition or renovation to the residential premises by or on behalf of the tenant is to be at the tenant's expense unless the landlord otherwise agrees,

(c) a tenant will be entitled, at the tenant's expense, to remove any fixture installed by the tenant without the requirement for the landlord's consent, other than a

fixture installed at the landlord's expense or for which the landlord provided an equivalent benefit,

(d) the tenant may apply to the Tribunal for an order that the landlord give consent to the installation of a fixture or to a renovation, alteration or addition or an order that the tenant does not need the landlord's consent to the removal of a fixture,

(e) the landlord may apply to the Tribunal for an order prohibiting the tenant from removing a fixture or that the tenant compensate the landlord for the cost of rectifying work done by or on behalf of the tenant on the residential premises.

Division 7 Security and safety of residential premises

Division 7 of Part 3 (sections 70–73) of the proposed Act re-enacts section 29 of the 1987 Act with the following additions and modifications:

(a) the initial copies of locks or other security devices must be provided by the landlord free of charge,

(b) a landlord or tenant who alters, removes or adds or causes or permits the alteration, removal or addition of a lock or other security device without the other party's consent, has a reasonable excuse for doing so if a tenant or occupant becomes subject to an apprehended violence order prohibiting access to the residential premises. Copies of changed keys or opening devices must be given to the other party within 7 days of the change,

(c) section 29A of the 1987 Act has been omitted because it is covered by the general requirement for landlords to comply with statutory obligations relating to the health or safety of residential premises.

Part 4 Changes of tenant and landlord

Part 4 (sections 74–79) of the proposed Act re-enacts Division 2 of Part 3 of the 1987 Act with the following additions and modifications:

(a) the landlord is required not to unreasonably withhold consent to a partial transfer or sub-letting of a tenancy by a tenant. The landlord may withhold consent if there will be more occupants than are permitted under the residential tenancy agreement or other laws, if any proposed tenant or sub-tenant is listed in a residential tenancy database or if the landlord is reasonably of the opinion that overcrowding would result,

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(b) the tenant may apply to the Tribunal for an order that the landlord consent to the partial transfer of a tenancy or the partial sub-letting of a tenancy by the tenant,

(c) if a tenant dies, any remaining tenants may continue the tenancy or give the landlord 21 days notice of termination of the tenancy,

(d) if a co-tenant or tenant is prohibited from having access to residential premises under a final apprehended violence order, that co-tenant's or tenant's tenancy is automatically terminated without affecting the tenancy of any other co-tenant,

(e) the Tribunal may recognise another occupant as a tenant after an apprehended violence order is made against a tenant or co-tenant or former tenant or co-tenant.

Part 5 Termination of residential tenancy agreements

Division 1 Termination of residential tenancy agreements

generally

Division 1 of Part 5 (sections 80–83) of the proposed Act re-enacts sections 53 and 63 of the 1987 Act with the following additions and modifications:

(a) new definitions of termination date (the day by which vacant possession of residential premises is to be given), termination notice and termination order

are included,

(b) a termination order by the Tribunal must also include an order for possession of the residential premises specifying the day on which the order takes or took effect.

Division 2 Termination by landlord

Division 2 of Part 5 (sections 84–95) of the proposed Act re-enacts sections 56, 57, 58, 64, 68 and 69 of the 1987 Act with the following additions and modifications:

(a) a landlord may give notice of termination of a residential tenancy agreement for a fixed term (a fixed term agreement), but only if the termination date is after the end of the fixed term and at least 30 days notice is given. In the case of any other residential tenancy agreement (a periodic agreement), 90 days notice must be given,

(b) the existing discretion of the Tribunal not to terminate a residential tenancy agreement where a termination notice is not given on specific grounds has been removed,

(c) the power of the Tribunal to make a termination order after a notice of termination is given under the proposed Division is contained in each provision under which the notice is given, rather than in a single provision,

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(d) the Tribunal may refuse to make a termination order on the ground of a breach by the tenant if the Tribunal is satisfied that the tenant has remedied the breach,

(e) the Tribunal may consider additional specified factors (such as previous breaches and the previous history of the tenancy) when determining whether to terminate a residential tenancy agreement on the ground of a breach by the tenant,

(f) a landlord may apply to the Tribunal for a termination order before the termination date if a termination notice is given on the ground of non-payment of rent but the Tribunal may not consider the application before the termination date,

(g) the Tribunal is prohibited from issuing a termination order on the ground of failure to pay rent if the tenant has paid all the rent owing or has entered into, and is complying with, a repayment plan agreed with the landlord, except where it is satisfied that the tenant has frequently failed to pay rent on or before the due date. A tenant may not be evicted from residential premises on the ground of non-payment of rent if the tenant has paid all the rent owing or has entered into, and is complying with, a repayment plan agreed with the landlord,

(h) the grounds on which a landlord may apply to the Tribunal for a termination order relating to serious damage or injury caused by a tenant have been extended to apply to serious damage or injury caused by other occupants and to circumstances where serious damage or injury is caused to neighbouring property or injury is caused to employees or contractors of the landlord or landlord's agent,

(i) a landlord may apply to the Tribunal for a termination order (without previously giving a termination notice) on the ground that the tenant or an occupant has intentionally or recklessly caused or permitted the use of the residential premises for illegal drug purposes or for another unlawful purpose and that the other unlawful use is sufficient to justify the termination,

(j) a landlord may apply to the Tribunal for a termination order (without previously giving a termination notice) on the ground that the tenant has seriously or persistently threatened or abused the landlord, landlord's agent or an employee or contractor of the landlord or landlord's agent, or intentionally

engaged in conduct to intimidate or harass any such person, or caused or permitted any such conduct. This right currently only applies to landlords under public housing tenancy agreements,

(k) a landlord may apply to the Tribunal for a termination order (without previously giving a termination notice) for a tenancy of more than 20 years and the Tribunal may make the order if it is appropriate to do so in the circumstances of the case and any fixed term of the current residential tenancy agreement has ended. A landlord cannot give a termination notice for such a tenancy without having specific grounds for termination,

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(l) a landlord may give an occupant remaining on the residential premises after the tenant has left 14 days notice to give vacant possession of the premises, whether or not the residential tenancy agreement has been terminated. The landlord may apply to the Tribunal for an order for possession of the premises against the occupant if such a notice is given and is not complied with.

Division 3 Termination by tenant

Division 3 of Part 5 (sections 96–105) of the proposed Act re-enacts sections 57, 59, 60, 64, 69A and 70 of the 1987 Act with the following additions and modifications:

(a) the power of the Tribunal to make a termination order after a notice of termination is given under the proposed Division is contained in each provision under which the notice is given, rather than in a single provision,

(b) a tenant may give a notice of termination of a fixed term agreement, and no compensation or other additional amount is payable, on the ground that the tenant has accepted accommodation in social housing or a place in an aged care facility, or requires care in such a facility, that the landlord has notified a proposed sale of the residential premises or that another co-tenant or occupant has become subject to a final apprehended violence order. Such a notice may be given, and take effect, before the end of the fixed term,

(c) a co-tenant may give a termination notice, with a minimum 21 days notice, to the landlord and each other co-tenant if the fixed term agreement has ended or if the residential tenancy agreement is a periodic agreement,

(d) a co-tenant may apply to the Tribunal for a termination order terminating the co-tenant's tenancy or the tenancy of another co-tenant under a residential tenancy agreement or terminating the agreement, the term of which has not ended, if the Tribunal is of the opinion that termination is appropriate in the special circumstances of the case,

(e) the Tribunal may refuse to make a termination order on the ground of a breach by the landlord if the landlord has remedied the breach,

(f) the Tribunal may consider additional specified factors (such as the previous breaches and the previous history of the tenancy) when determining whether to terminate a residential tenancy agreement on the ground of a breach by the landlord,

(g) the right of a tenant to apply to the Tribunal for termination on the ground of hardship will only apply to fixed term agreements where the term has not ended. Compensation for loss of tenancy will be limited to a specified break fee.

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Division 4 Abandonment of residential premises

Division 4 of Part 5 (sections 106 and 107) re-enact sections 77 and 78 of the 1987 Act, with the following additions and modifications:



(a) the provisions list matters to be taken into account by the Tribunal in considering whether residential premises have been abandoned, including failure to pay rent, evidence that the tenant no longer resides at the residential premises and the tenant's failure to carry out obligations under the residential tenancy agreement,

(b) if a tenant abandons the residential premises, the landlord may apply to the Tribunal for an order for compensation. Such compensation may be limited to a specified break fee if a residential tenancy agreement for a fixed term so provides.

#### Division 5 Termination by events

Division 5 of Part 5 (sections 108 and 109) of the proposed Act re-enacts section 61 of the 1987 Act. It also contains an additional provision that enables the legal personal representative of a deceased sole tenant under a residential tenancy agreement to give a termination notice. The estate of the deceased tenant is not liable to pay rent for any period after which vacant possession of the residential premises is given and the termination notice may be given before the end of a fixed term agreement.

#### Division 6 Miscellaneous

Division 6 of Part 5 (sections 110–118) of the proposed Act re-enacts sections 54, 55 and 65 of the 1987 Act with the following additions and modifications:

(a) a tenant who has been given a termination notice by the landlord, or who gives a termination notice, may vacate the residential premises before the

termination date. A tenant given a termination notice by a landlord is not liable to pay rent for any period after the tenant vacates the residential premises,

(b) the Tribunal may make a termination order despite a defect in the termination notice or service of the notice but must be satisfied that the person concerned has not suffered any disadvantage because of the defect or that the order overcomes the disadvantage,

(c) it is made clear that a landlord or tenant may give more than one termination notice concurrently on different grounds.

#### Part 6 Recovery of possession of premises

##### Division 1 Recovery of possession

Division 1 of Part 6 (sections 119–125) of the proposed Act re-enacts Division 4 of Part 5 of the 1987 Act. The provision relating to the minimum period within which a tenant may be required to vacate residential premises subject to a mortgagee

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repossession has been omitted, as that requirement will now be contained in the Sheriff Act 2005 (see Schedule 3.16). The requirement for a tenant who remains in occupation after failing to comply with an order of the Tribunal to pay compensation has been removed.

##### Division 2 Goods left on residential premises

Division 2 of Part 6 (sections 126–135) of the proposed Act contains a new scheme for dealing with goods left by a tenant or an occupant after giving vacant possession of the residential premises or abandoning the premises. The Division provides for the following:

(a) the landlord may remove, or otherwise dispose of, perishable goods (including rubbish) at any time,

(b) notice of disposal must be given to the former tenant or, if the landlord is unable to give the notice to the former tenant in any other permitted manner, by posting a notice in a prominent position on the residential premises,

(c) the landlord may remove and store the goods pending disposal or collection,

(d) the landlord may dispose of the goods (other than personal documents) by

selling them or by other lawful means, if they are not collected or arrangements to collect them are not made within 14 days of the landlord giving a notice of disposal,

(e) the landlord may dispose of personal documents (such as passports and other documents containing personal information) by returning them to the issuing authority or, if that is not reasonably practicable, in any other lawful manner the landlord thinks fit, if they are not collected or arrangements to collect them are not made within 90 days of the landlord giving a disposal notice,

(f) the landlord must deliver up goods claimed by a person who is entitled to them before they are disposed of and may not charge any more than an occupation fee, not exceeding 14 days rent, for each day the goods are left on the premises or stored,

(g) if the tenant abandons the residential premises or dies, the landlord may apply to the Tribunal for orders as to the disposal of goods (other than perishable goods) and must act in accordance with such orders,

(h) the landlord may also seek an order for the payment of an occupation fee, not exceeding 14 days rent, for each day the goods are left on the premises or stored,

(i) a tenant or a person with an interest in the goods may apply to the Tribunal for an order for compensation for an unlawful disposal of the goods by the landlord or an order for delivery of the goods into the possession of the tenant or person or for other orders relating to the goods,

(j) a person who purchases goods sold by a landlord in accordance with the Division will obtain a good title to the goods,

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(k) a person will not be personally liable for any removal, disposal or sale of goods in accordance with the Division.

Part 7 Social housing tenancy agreements

Division 1 Preliminary

Division 1 of Part 7 (sections 136 and 137) of the proposed Act re-enacts definitions of terms relating to social housing tenancies contained in the 1987 Act and provides that the Part prevails to the extent of any inconsistency with the other provisions of the proposed Act and any regulations made under the proposed Act.

Division 2 Acceptable behaviour agreements

Division 2 of Part 7 (section 138) of the proposed Act re-enacts section 35A of the 1987 Act.

Division 3 Water usage charges, rent and other payments

Division 3 of Part 7 (sections 139–141) of the proposed Act re-enacts sections 19A, 19B and 47A of the 1987 Act. The provisions relating to water usage charges will not apply to social housing tenancy agreements if the agreements specify that section 39 of the proposed Act is to apply.

Division 4 Fixed term agreements

Division 4 of Part 7 (section 142) of the proposed Act re-enacts section 14A of the 1987 Act. It also provides that a further fixed term agreement created by the provision may be terminated by the tenant as if it were a periodic agreement.

Division 5 Termination of social housing tenancy agreements—additional grounds

Division 5 of Part 7 (sections 143–155) of the proposed Act re-enacts Division 2A of Part 5 of the 1987 Act.

Division 6 Exemption

Division 6 of Part 7 (section 156) of the proposed Act re-enacts, with minor changes, an exemption currently contained in regulations under the 1987 Act.

## Part 8 Rental bonds

### Division 1 Preliminary

Division 1 of Part 8 (sections 157 and 158) of the proposed Act re-enacts relevant definitions of terms relating to rental bonds contained in the 1977 Act. Included in the provisions is an extension of the definitions of landlord, residential tenancy agreement and tenant so as to apply the Part to premises and agreements covered by Explanatory note page 15

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the Residential Parks Act 1998. The Division also makes it clear that a mortgagee entitled to possession may exercise the functions of a landlord under the proposed Part in respect of the release of a rental bond.

### Division 2 Payment and deposit of rental bonds

Division 2 of Part 8 (sections 159–162) of the proposed Act re-enacts sections 8 and 9 of the 1977 Act with the following additions and modifications:

- (a) functions formerly conferred on the Rental Bond Board (the Board) are now conferred on the Director-General,
- (b) the maximum amount of rental bond that may be required or received is 4 weeks rent under the residential tenancy agreement as in force when it was entered into. The current separate maximum amount of 6 weeks rent for furnished premises has been omitted,
- (c) it will be an offence to require or receive more than one rental bond, or additional amounts of rental bond, for a residential tenancy agreement or to require or receive a rental bond if a rental bond has already been paid and not claimed under a residential tenancy agreement and one or more of the original tenants still occupy the premises under a successor agreement,
- (d) the period within which a rental bond is to be deposited with the Director-General has been changed from 7 days to 10 days, with additional periods for deposits by landlord's agents,
- (e) rental bonds may be paid by instalments if the landlord and tenant agree, with separate provision being made for the periods within which instalments of rental bond are payable to the Director-General.

### Division 3 Release of rental bonds

Division 3 of Part 8 (sections 163–176) of the proposed Act re-enacts sections 11 and 11A of the 1977 Act with the following additions and modifications:

- (a) functions formerly conferred on the Board are now conferred on the Director-General,
- (b) a landlord or person on behalf of a landlord who makes a rental bond claim against a tenant, without the tenant's consent, must provide the tenant with a copy of a completed condition report for the premises as at the end of the residential tenancy agreement and copies of any estimates, quotes, invoices or receipts for relevant work for which the claim is made,
- (c) specified matters are listed for which a rental bond claim may be made, including repairs for damage (other than fair wear and tear), rent or other unpaid charges under the residential tenancy agreement, reasonable cleaning costs if the premises are not left reasonably clean and the reasonable cost of replacing locks or other security devices altered, removed or added without the landlord's consent,

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(d) co-tenants under a residential tenancy agreement must pay to a co-tenant who ceases to be a tenant the amount of any rental bond paid by the former co-tenant, unless there is a final apprehended violence order in force against

the former co-tenant in relation to any remaining tenant.

Division 4 Rental Bond Board

Division 4 of Part 8 (sections 177–179) of the proposed Act re-enacts Part 2 of the 1977 Act, constituting the Board.

Division 5 Functions of Board relating to residential accommodation

Division 5 of Part 8 (sections 180–184) of the proposed Act re-enacts Part 2A of the 1977 Act, conferring functions relating to residential accommodation on the Board.

Division 6 Financial matters

Division 6 of Part 8 (sections 185 and 186) of the proposed Act re-enacts sections 18–21 of the 1977 Act, establishing the Rental Bond Account and the Rental Bond Interest Account.

Part 9 Powers of Tribunal

Division 1 General powers of Tribunal

Division 1 of Part 9 (sections 187–189) of the proposed Act re-enacts sections 16 (2) and (3), 78 (3) and 85 of the 1987 Act. The Tribunal's power to order compensation is also extended to compensation for the listing of inaccurate, ambiguous or out-of-date information on a residential tenancy database. The Division also makes it clear that a former landlord or former tenant may apply for orders under the proposed Act.

Division 2 Powers of Tribunal relating to breaches of residential tenancy agreements

Division 2 of Part 9 (sections 190 and 191) of the proposed Act re-enacts section 16 (1) and (4) of the 1987 Act. It also contains matters to be considered by the Tribunal when considering applications relating to breaches of security conditions.

Division 3 Powers of Director-General in proceedings

Division 3 of Part 9 (sections 192–195) of the proposed Act re-enacts sections 95–98 of the 1987 Act, but confers the functions under those provisions on the Director-General.

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Part 10 Enforcement

Division 1 Powers of investigators

Division 1 of Part 10 (sections 196–201) contains provisions conferring the following powers on investigators for the purpose of ascertaining whether the proposed Act and any regulations are being complied with or obtaining evidence, documents or information in relation to contraventions of the Act or regulations:

(a) powers of entry and inspection,

(b) power to require persons to produce documents and to take copies of or extracts from such documents,

(c) power to take photographs and other recordings after entering premises,

(d) power to require a person on premises entered to answer questions or furnish information,

(e) power to require a person, by giving the person a written notice, to provide information, produce documents or to appear before an investigator to give evidence,

(f) power to retain documents as evidence.

The Division also makes it an offence to obstruct an investigator and includes an updated provision relating to search warrants for searches by investigators of residential premises. The powers conferred on investigators are in addition to the powers conferred on them under the Fair Trading Act 1987.

Division 2 Offences

Division 2 of Part 10 (sections 202–205) of the proposed Act re-enacts and updates

sections 124, 127 and 128 of the 1987 Act. Section 125 of the 1987 Act has not been re-enacted as offences are now contained in individual provisions of the proposed Act. The Division also enables penalty notices to be issued for offences specified by the regulations under the proposed Act.

Division 3 Mandatory appointment of agents for landlords

Division 3 of Part 10 (sections 206 and 207) of the proposed Act contains a scheme under which the Director-General may issue a mandatory direction to a landlord requiring the landlord to appoint an agent. Such a direction may prohibit a specified person from being appointed and cannot be given to a landlord who already has an agent. A direction can only be given if a landlord has engaged in serious or persistent breaches of the proposed Act, the regulations or residential tenancy agreements. The landlord may seek a review of a direction from the Administrative Decisions Tribunal.

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Division 4 Costs in certain court proceedings

Division 4 of Part 10 (section 208) of the proposed Act re-enacts section 120A of the 1987 Act.

Part 11 Residential tenancy databases

Division 1 Preliminary

Division 1 of Part 11 (sections 209 and 210) of the proposed Act defines words and expressions used in the Part and provides that the Part will not apply to entities that keep databases for their own purposes.

Division 2 Tenancy database information

Division 2 of Part 11 (sections 211–218) sets out a scheme for the use of tenancy databases, as follows:

(a) a landlord or landlord's agent must notify a prospective tenant if a residential tenancy database is used to decide whether to enter into a residential tenancy agreement with the prospective tenant and contains information about the tenant and must also notify contact details of the database operator and details of who listed the information and how it may be changed or removed,

(b) personal information about a person must be listed on a residential tenancy database only if the person has breached a residential tenancy agreement that has terminated and because of the breach the person owes the landlord more than the amount of the rental bond or the Tribunal has ordered the termination of the agreement,

(c) personal information about a person must also not be listed unless the person concerned has been given a copy of the information and any submissions about the proposed entry have been considered by the landlord or agent (unless the person cannot be found after reasonable inquiries),

(d) a landlord or agent of a landlord who lists personal information in a residential tenancy database and who becomes aware that the information is inaccurate, incomplete, ambiguous or out-of-date must notify the database operator within 7 days. The database operator must amend or remove the information within 14 days of notice being given,

(e) a landlord or agent who lists personal information on a residential tenancy database or a database operator must give a person, on written request, a copy of information held about the person on the residential tenancy database,

(f) the Tribunal may, on application by a person who claims that information about the person is inaccurate, incomplete, ambiguous or out-of-date, may order information in a residential tenancy database to be wholly or partly removed or amended in a specified way. The Tribunal may also make such an order if it is satisfied that the inclusion of information on a database is unjust,

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(g) personal information about a person must not be kept on a residential tenancy database for longer than 3 years or a lesser period if the national privacy principles require the operator to remove the information within the lesser period.

Part 12 Miscellaneous

Part 12 (proposed sections 219–227) of the proposed Act re-enacts and updates sections 120, 126, 130 and 133 of the 1987 Act. The Part also contains provisions relating to the following matters:

(a) the appointment of agents by tenants (currently this is limited to certain kinds of tenants),

(b) the functions of the Director-General, which are similar to those formerly conferred on the Tenancy Commissioner,

(c) service of documents on a person may be effected by leaving them in the mailbox at the residential or business address of the person,

(d) the review of the proposed Act as soon as possible after the period of 5 years from the date of assent to the proposed Act to determine whether the policy objectives of the proposed Act remain valid and whether the terms of the Act are appropriate for achieving them.

Schedule 1 Membership and procedure of Rental

Bond Board

Schedule 1 contains provisions relating to the constitution and procedure of the Board.

Schedule 2 Savings, transitional and other provisions

Schedule 2 contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

Schedule 3 Amendment of Acts

Schedule 3 amends the Acts specified in the Schedule as a consequence of the enactment of the proposed Act.