

RESIDENTIAL TENANCIES TRIBUNAL BILL 1986

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The following Bills are cognate with this Bill:

Landlord and Tenant (Amendment) Bill 1986;

Landlord and Tenant (Rental Bonds) Amendment Bill 1986;

Auctioneers and Agents (Amendment) Bill 1986;

Statutory and Other Offices Remuneration (Residential Tenancies Tribunal) Amendment Bill 1986.

The objects of this Bill are—

- (a) to constitute the Residential Tenancies Tribunal of New South Wales (“the Tribunal”);
- (b) to provide for the making of applications to and the conduct of proceedings before the Tribunal;
- (c) to give the Commissioner for Consumer Affairs certain functions under the proposed Act, including power to investigate matters and take proceedings on behalf of tenants;
- (d) to give tenants the right to apply to the Tribunal to have rent increases and certain rents declared excessive and to have a new rent set by the Tribunal;
- (e) to prevent the payment by tenants of amounts other than rent and a rental bond in consideration for residential premises; and

- (f) to ensure that landlords give receipts for rent paid and keep proper records of rent paid.

PART 1—PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the provisions of the proposed Act will, with minor exceptions, commence on a day or days to be appointed by the Governor-in-Council.

Clause 3 states that the proposed Act binds the Crown.

Clause 4 defines certain expressions for the purposes of the proposed Act. Important definitions include the following:

“landlord”, which means the person who grants to another person the right to occupy residential premises under a residential tenancy agreement;

“rent”, which means an amount payable by the tenant under a residential tenancy agreement in respect of a period of the tenancy;

“residential premises”, which means any premises or part of premises (including any land occupied with the premises) that are, or are intended to be, used as a place of residence and includes a caravan or other movable dwelling;

“residential tenancy agreement”, which means any agreement, whether express or implied or oral or in writing, under which a person grants to another person for value the right to occupy residential premises, whether exclusively or otherwise, for the purpose of their use as a residence and includes such an agreement granting the right to occupy residential premises together with the letting of goods;

“tenant”, which means the person who has the right to occupy residential premises under a residential tenancy agreement.

Clause 5 sets out the residential tenancy agreements and the premises to which the proposed Act applies. The proposed Act applies to agreements made before the date of assent to the proposed Act irrespective of the terms of any such agreement. It does not apply to tenancies arising under a contract of sale or a mortgage or from the fact that a person is the owner of a company title property, to boarders or lodgers or to agreements to let holiday premises. The premises the proposed Act does not apply to include hotels or motels, educational institutions, hospitals, nursing homes, clubs and premises protected under the Landlord and Tenant (Amendment) Act 1948.

Clause 6 enables regulations to be made under the proposed Act to exclude or vary the application of the proposed Act to specified persons, residential tenancy agreements or premises or to specified classes of persons, residential tenancy agreements or premises.

PART 2—THE RESIDENTIAL TENANCIES TRIBUNAL OF NEW SOUTH WALES
DIVISION 1—*Constitution of the Tribunal*

Clause 7 constitutes the Tribunal and provides for the appointment of a Chairperson who is, or is qualified to be, a Magistrate and for the appointment of other full-time members who are, or are eligible to be, admitted as barristers or solicitors. Part-time members may also be appointed.

Clause 8 provides that full-time members of the Tribunal must not be of or above 65 years of age and that part-time members must not be of or above 70 years of age.

Clause 9 gives members of the Tribunal and the Registrar and Deputy Registrars of the Tribunal the same immunity in exercising their functions and any jurisdiction of the Tribunal as a Justice exercising the functions of a Justice under the Justices Act 1902.

Clause 10 provides for members of the Tribunal to hold office for a term not exceeding 5 years and for the re-appointment of members otherwise eligible for re-appointment.

Clause 11 states that the Public Service Act 1979 does not apply to members of the Tribunal and that nothing in other Acts disqualifies a person from being a part-time member and holding an office under any other Act.

Clause 12 provides for the remuneration of members of the Tribunal.

Clause 13 sets out the situations in which a member of the Tribunal shall be deemed to have vacated office. These include absence without leave from duty for more than 28 consecutive days, death, bankruptcy, conviction for an offence punishable by imprisonment for more than 12 months and reaching the maximum age. The clause also enables the Governor to retire or dismiss members.

Clause 14 provides that a person shall be appointed to fill a vacancy in the office of a member of the Tribunal.

Clause 15 provides for the appointment of acting members of the Tribunal and the remuneration to be paid to acting members. An acting member is deemed to be a member and may exercise all the functions of a member.

Clause 16 is a formal provision that gives effect to the Schedule dealing with the superannuation rights of full-time members of the Tribunal.

DIVISION 2—*Registrar, Deputy Registrars and staff of the Tribunal*

Clause 17 provides for the employment and functions of the Registrar and Deputy Registrars of the Tribunal. In the absence of the Registrar, a Deputy Registrar may exercise the functions of the Registrar. The clause also enables the use of staff of government departments and other bodies by the Tribunal.

DIVISION 3—*Jurisdiction and functions of the Tribunal*

Clause 18 states that the Tribunal has the jurisdiction conferred on it by the proposed Act or any other Act. The clause enables the Chairperson of the Tribunal to delegate the exercise of part of the jurisdiction of the Tribunal to the Registrar or a Deputy Registrar.

Clause 19 sets out the kinds of orders which can be made by the Tribunal and the monetary limit on those orders. The orders include orders for the payment of money, orders restraining breaches of residential tenancy agreements, orders requiring performance of residential tenancy agreements, orders declaring rent to be excessive and orders requiring the payment of rent into the Tribunal.

DIVISION 4—*Hearings*

Clause 20 sets out the way in which applications are to be made to the Tribunal. Applications are to be made in writing, contain the prescribed particulars and be lodged with the prescribed fee.

Clause 21 provides for the fixing of times and places for the holding of proceedings by the Chairperson of the Tribunal. The Tribunal shall allow witnesses to be called and examined and submissions to be made. Proceedings before the Tribunal may be held in the absence of a party.

Clause 22 enables an applicant to proceed against persons having joint liability by serving only one of the persons with documents in the proceedings. The clause also gives a legal personal representative the right to bring proceedings as if the representative were bringing proceedings in the representative's own right. The Tribunal may join any person as a party to proceedings and may recognise a person who is not a party to a residential tenancy agreement as a tenant. A person recognised as a tenant is deemed to be a tenant under the agreement for the purposes of any Act and the agreement itself.

Clause 23 provides that the Tribunal may, on the request of an applicant or of its own motion, amend an application.

Clause 24 provides that the Tribunal may adjourn proceedings before it.

Clause 25 sets out the procedure in proceedings before the Tribunal. The constitution of the Tribunal at each sitting and the sittings are to be determined by the Chairperson. Proceedings are to be heard and determined by one member sitting alone. The Tribunal will not be bound by the rules of evidence and is to act according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms. The Tribunal is also empowered to request a report from, or assistance by, the Commissioner for Consumer Affairs.

Clause 26 provides that a party shall present his or her own case. An exception is to be made so as to allow parties to be represented by other persons where it appears to the Tribunal that the party would otherwise be unfairly disadvantaged or it appears to the Tribunal to be a matter of necessity. The Tribunal may approve of a party being represented only if the Tribunal is satisfied that the other parties will not be disadvantaged.

Clause 27 enables the member of the Tribunal before whom proceedings are being or are to be held to direct the manner or form of procedure for taking any step in proceedings before the Tribunal where the manner or form is not prescribed by the proposed Act or any regulations made under the proposed Act.

Clause 28 enables the Registrar, at the direction of the Tribunal or at the request of a party to the proceedings, to issue a summons requiring a person to give evidence or produce a record. The member before whom proceedings are being held may administer an oath to a witness before the Tribunal. A witness appearing at proceedings will have the same protection and liabilities as a witness in proceedings before a Local Court and, if summoned at the direction of the presiding member, is entitled to be paid such fees and allowances as are prescribed. The Chairperson is also given the powers of a Justice under the Justices Act 1902 to issue a warrant for the arrest of and to detain a witness who fails to comply with a summons.

Clause 29 provides for the use of evidence given in other proceedings, the adoption of findings, decisions or judgments by other courts or tribunals and the use of a report by the Commissioner for Consumer Affairs, in proceedings before the Tribunal.

Clause 30 empowers the Tribunal to inspect and retain records and statements produced before it.

Clause 31 sets out the procedure for the referral of a question with respect to a matter of law to the Supreme Court by the Tribunal. Where the Tribunal refers a question to the Supreme Court, the Tribunal must not make any order relating to the question before the Court's decision is remitted to it and must not afterwards make an order which is inconsistent with the decision.

Clause 32 gives a party who is dissatisfied with the decision of the Tribunal with respect to a matter of law a right to appeal to the Supreme Court against the decision. The Supreme Court may, on such an appeal being made, make such orders as it thinks should have been made by the Tribunal or may order a re-hearing before the Tribunal.

Clause 33 provides that the Tribunal may dismiss proceedings which it is satisfied are frivolous, vexatious, misconceived or lacking in substance and may order costs to be paid by the person who brought the proceedings.

Clause 34 specifies that the Tribunal must not make an order unless it has brought, or done its best to bring, the parties to a settlement.

Clause 35 enables a party to proceedings before the Tribunal to apply for an order varying or setting aside an order made in the proceedings.

Clause 36 states that an order of the Tribunal is final and that no appeal shall lie in respect of such an order. This is subject to clauses 32 and 35.

Clause 37 provides that orders for the payment of money shall be deemed to be a judgment of the appropriate court. This means that they will be enforceable in the same way as a judgment of the court.

Clause 38 states that costs shall not be allowed to or against any party to proceedings before the Tribunal. This is subject to clause 33.

Clause 39 provides that the Tribunal must state in writing its reasons for any order or decision made in proceedings before it. A copy of the reasons may be obtained from the Registrar.

Clause 40 makes it an offence wilfully to contravene an order or decision of the Tribunal and imposes a penalty of 50 penalty units (\$5,000) or 12 months imprisonment, or both. The clause gives the Tribunal, when constituted by the Chairperson, the same powers as a Magistrate with respect to contempts committed in the face of the Tribunal and enables the Supreme Court to deal with other contempts as if the Tribunal were a Local Court constituted by a Magistrate sitting alone. Where the Chairperson does not constitute the Tribunal, the clause makes it an offence wilfully to insult, misbehave, interrupt or disobey the directions of the Tribunal during proceedings before it. A penalty of 5 penalty units (\$500) or 6 months imprisonment is imposed. The clause also enables the Tribunal, when not constituted by the Chairperson, to direct a person to remove himself or herself from proceedings before it.

Clause 41 empowers the Tribunal to refer the conduct of a landlord's agent to the registrar of the Council of Auctioneers and Agents or to the Commissioner for Consumer Affairs, or both.

PART 3—COMMISSIONER FOR CONSUMER AFFAIRS

Clause 42 sets out the functions of the Commissioner for Consumer Affairs under the proposed Act. These include the investigation of and research into matters relating to or affecting the relationship between landlords and tenants, the investigation of complaints by landlords and tenants, the distribution of information about the proposed Act, the investigation of and reporting on matters referred by the Tribunal and co-operation with bodies or persons, including public bodies, advising landlords and tenants and carrying out research into matters affecting them.

Clause 43 enables the Commissioner for Consumer Affairs, by a barrister, solicitor or agent, to represent a tenant in proceedings before the Tribunal.

Clause 44 provides that the Commissioner for Consumer Affairs may, after investigating a complaint made by a tenant, take or defend proceedings before the Tribunal on behalf of a tenant. A consent given by a tenant to the conduct of proceedings by the Commissioner is irrevocable, unless the Commissioner consents to revocation.

Clause 45 gives the Commissioner for Consumer Affairs the conduct of proceedings on behalf of a tenant and makes the Commissioner liable to pay the costs (if any) of the tenant but not any other amount that the Tribunal orders the tenant to pay.

Clause 46 enables the Commissioner for Consumer Affairs to intervene in proceedings before the Tribunal, where the Commissioner thinks that it would be in the public interest to do so or where the Minister so directs.

Clause 47 provides that the Commissioner for Consumer Affairs may delegate the exercise of any of the functions conferred on the Commissioner under the proposed Act. A delegation may be general or limited, may be revoked (wholly or partly) and may be made subject to conditions.

Clause 48 provides for the appointment of investigating officers by the Commissioner for Consumer Affairs and provides for the issue to them of certificates of identification. The certificate is to be produced by an investigating officer on request when the officer is carrying out functions under the proposed Act. No liability is incurred by an investigating officer for any act done or omitted by the officer in the course of the administration of the proposed Act.

Clause 49 empowers an investigating officer to issue a notice in writing requiring a person to provide information, produce documents or appear before an officer, where the officer has reason to believe that the person is capable of giving information, producing documents or giving evidence in relation to a matter that constitutes, or may constitute, a contravention of the proposed Act. The investigating officer may also enter premises where the officer believes on reasonable grounds that a person has engaged, or is engaging, in conduct that constitutes, or may constitute, a contravention of the proposed Act. The clause also makes it an offence for a person to refuse or fail to comply with a notice under the clause or to give evidence which is false or misleading in purported compliance with the clause. A penalty of 5 penalty units (\$500) is imposed.

Clause 50 enables the Commissioner for Consumer Affairs, a person authorised by the Commissioner or an investigating officer to inspect, make copies of and take and retain possession of a document produced in accordance with a notice given under clause 49. A person who would otherwise be entitled to possession of a document held under this clause is entitled to be supplied with a copy of the document certified to be a true copy, which is to be received in all courts as if it were the original.

PART 4—RENTS

DIVISION 1—*Rent increases and excessive rents*

Clause 51 provides that the rent payable under a residential tenancy agreement shall be increased not less than 60 days after a notice in writing is given to the tenant. A landlord may not increase rent under a fixed term residential tenancy agreement during the currency of the term, unless the agreement otherwise provides. The effect of giving a notice is to vary the agreement as from the day the rent increase takes effect.

Clause 52 gives a tenant the right to apply, not later than 30 days after being given notice of a rent increase, to the Tribunal for an order declaring that the rent increase is excessive. A tenant may also apply to the Tribunal for an order declaring that rent is excessive where services or facilities provided with the residential premises have been reduced or withdrawn. Applications may be made in relation to an existing residential tenancy agreement or in relation to a rent increase or rent payable under a proposed residential tenancy agreement for residential premises already occupied by the tenant. The Tribunal may have regard to certain factors, including the general market level of rents for comparable premises, the value of the residential premises, outgoings and other matters, in determining whether a rent increase or rent is excessive. If it determines that a rent increase or rent is excessive, the Tribunal may make an order declaring that the rent is excessive and order that the rent not exceed a specified amount. Such an order has effect for 1 year or any shorter period specified in the order and binds only the parties to the residential tenancy agreement or proposed residential tenancy

agreement. The clause makes it an offence for a landlord to demand, require or receive any rent in excess of the rent specified in an order and imposes a penalty of 5 penalty units (\$500).

Clause 53 enables the Tribunal to make an interim order having the effect of suspending payment of a rent increase or rent where an application is made to the Tribunal for an order that a rent increase or rent is excessive.

DIVISION 2—*Offences*

Clause 54 makes it an offence for a person to require or receive any consideration in relation to entering into, renewing, extending or continuing a residential tenancy agreement, other than rent and a rental bond, and imposes a penalty of 20 penalty units (\$2,000).

Clause 55 makes it an offence to receive rent in advance of more than 2 or 4 weeks' rent, depending on whether the rent does not exceed or is equal to or exceeds the prescribed amount. A penalty of 5 penalty units (\$500) is imposed.

Clause 56 makes it an offence to require or receive a post-dated cheque or other post-dated negotiable instrument in payment of rent under a residential tenancy agreement and imposes a penalty of 5 penalty units (\$500).

Clause 57 specifies that rent receipts containing certain particulars must be issued and imposes a penalty of 5 penalty units (\$500). A receipt is not required where rent is paid into an account at a bank, building society or other similar body.

Clause 58 imposes an obligation on the landlord or the landlord's agent to keep a record of rent received for a period of not less than 12 months succeeding the termination of a tenancy. A penalty of 5 penalty units (\$500) is imposed.

Clause 59 makes it an offence knowingly to make to a tenant or a prospective tenant a false or misleading statement or misrepresentation, whether oral or written, concerning the rights and remedies of the tenant or prospective tenant under the proposed Act. A penalty of 50 penalty units (\$5,000) is imposed.

PART 5—MISCELLANEOUS

Clause 60 provides that no residential tenancy agreement, contract or other agreement or arrangement, whether oral or in writing or made or entered into before or after the commencement of the clause operates to annul, vary or exclude any of the provisions of the proposed Act.

Clause 61 makes it an offence, except in certain circumstances, to disclose any information obtained in connection with the administration or execution of the proposed Act and imposes a penalty of 5 penalty units (\$500).

Clause 62 allows references in Acts and instruments to the Residential Tenancies Tribunal to be construed as references to the Residential Tenancies Tribunal of New South Wales.

Clause 63 provides that the signature of the Chairperson or a member of staff of the Tribunal authorised by the Chairperson is sufficient to authenticate a document requiring authentication by the Tribunal.

Clause 64 is an evidentiary provision which precludes proof of the constitution of the Tribunal or of the appointment of, or the holding of office by, any member of the Tribunal from being required in any legal proceedings. The clause also provides that proceedings for an offence against the proposed Act shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Clause 65 provides that the costs of the administration of the proposed Act shall not, so far as is practicable, exceed the amount of contributions paid for that purpose from the Auctioneers and Agents Statutory Interest Account and the Rental Bond Interest Account.

Clause 66 sets out the value of a penalty unit. A reference to a penalty unit is a reference to an amount of money equal to the amount obtained by multiplying \$100 by that number of penalty units.

Clause 67 makes directors of a corporation and persons concerned in the management of a corporation liable for contraventions of the proposed Act by the corporation. A director or manager is not liable if the contravention occurred without his or her knowledge, he or she could not have influenced the corporation's conduct or he or she used all due diligence to prevent the contravention. The clause does not affect the liability of the corporation and does not apply to statutory corporations.

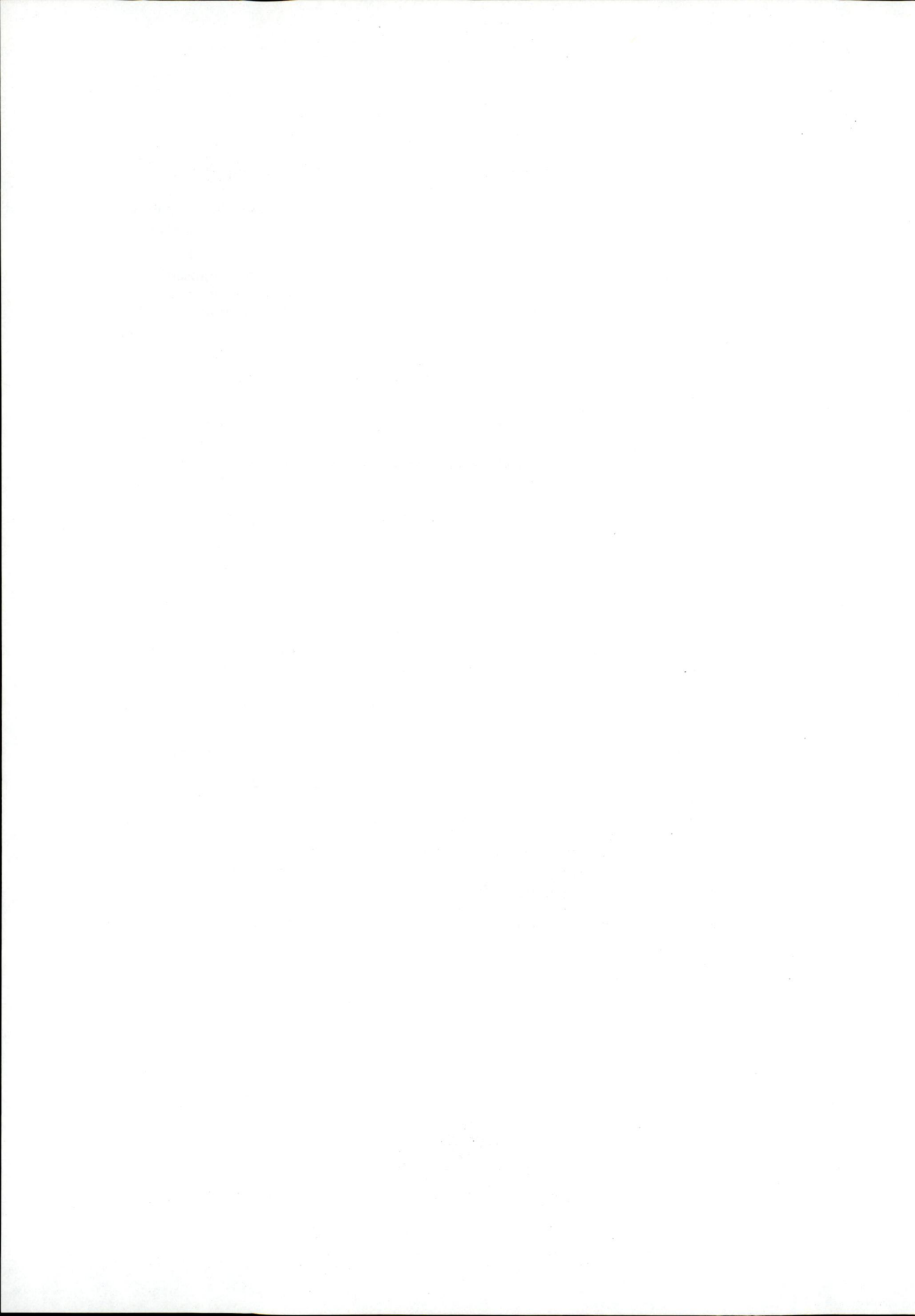
Clause 68 sets out the manner of service of documents on tenants, landlords and the Tribunal under the proposed Act. Documents may be served on landlords and tenants personally or by post or in such other manner as may be prescribed or approved by the Tribunal. Documents may be served on the Tribunal by post.

Clause 69 sets out the regulation making power under the proposed Act. In particular, regulations may be made as to the practice and procedure of the Tribunal, the Registrar's powers to regulate the business of the Tribunal, the Registrar's duties in relation to proceedings before the Tribunal and the service of notices. Regulations may create an offence and impose a penalty not exceeding 5 penalty units (\$500) and may be general or specific in application.

Clause 70 gives effect to the Schedule of savings, transitional and other provisions.

Schedule 1 makes provision with respect to the superannuation rights and the rights to re-appointment to positions of full-time members previously public servants or employed in the Teaching Service or by a statutory body.

Schedule 2 contains savings, transitional and other provisions. It prevents a person from being liable for a contravention of, or failure to comply with, certain provisions of the proposed Act which occurred after 5 January 1986 and before the provisions commenced. It extends the time for applications to be made to the Tribunal in relation to rents and rent increases having effect on or after 5 January 1986 and before the commencement of clause 52. A regulation making power to enable any other necessary savings or transitional provisions to be made is also contained in the Schedule.



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RESIDENTIAL TENANCIES TRIBUNAL BILL 1986

NEW SOUTH WALES



No. , 1986

A BILL FOR

An Act to constitute the Residential Tenancies Tribunal of New South Wales and provide for the exercise of its functions; to make provision with respect to excessive rent increases and rents; and for other purposes.

See also Landlord and Tenant (Amendment) Bill 1986; Landlord and Tenant (Rental Bonds) Amendment Bill 1986; Auctioneers and Agents (Amendment) Bill 1986; Statutory and Other Offices Remuneration (Residential Tenancies Tribunal) Amendment Bill 1986.

Residential Tenancies Tribunal 1986

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

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PART 1

PRELIMINARY

Short title

1. This Act may be cited as the "Residential Tenancies Tribunal Act 1986".

10 **Commencement**

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day or days as may be appointed by the Governor and notified by proclamation published in the Gazette.

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Act binds Crown

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

20 **Interpretation**

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

"Chairperson" means the Chairperson of the Tribunal;

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"Commissioner for Consumer Affairs" means the Commissioner for Consumer Affairs appointed under section 13 of the Consumer Protection Act 1969 and any person appointed under that Act to act as Commissioner;

"Deputy Registrar" means a Deputy Registrar of the Tribunal;

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"landlord" means the person who grants to another person the right to occupy residential premises under a residential tenancy agreement;

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- “member” means the Chairperson or any other full-time member or part-time member of the Tribunal;
- “record” includes any book, account, document, paper or other source of information compiled, recorded or stored in written form, or on microfilm, or by electronic process, or in any other manner or by any other means;
- “Registrar” means the Registrar of the Tribunal;
- “regulations” means regulations made under this Act;
- “rent” means an amount payable by the tenant under a residential tenancy agreement in respect of a period of the tenancy;
- “rental bond”, in relation to a residential tenancy agreement or proposed residential tenancy agreement, has the same meaning as it has in the Landlord and Tenant (Rental Bonds) Act 1977 in relation to a lease or proposed lease;
- “residential premises” means any premises or part of premises (including any land occupied with the premises) that are, or are intended to be, used as a place of residence and includes a caravan or other movable dwelling;
- “residential tenancy agreement” means any agreement, whether express or implied or oral or in writing, under which a person grants to another person for value the right to occupy residential premises, whether exclusively or otherwise, for the purpose of their use as a residence and includes such an agreement granting the right to occupy residential premises together with the letting of goods;
- “tenancy” means the right to occupy residential premises under a residential tenancy agreement;
- “tenant” means the person who has the right to occupy residential premises under a residential tenancy agreement;
- “this Act” includes the regulations;
- “Tribunal” means the Residential Tenancies Tribunal of New South Wales constituted by this Act.
- (2) In this Act—
- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

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(3) The Chairperson may be referred to as the Chairman or Chairwoman, as the case requires.

(4) For the purposes of this Act, a residential tenancy agreement is implied where the existence of a tenancy of residential premises is presumed by the operation of section 22A of the Landlord and Tenant Act 1899.

Application of Act

5. (1) This Act applies—

10 (a) to residential tenancy agreements, whether made before or after the date of assent to this Act, notwithstanding the terms of any such residential tenancy agreement or any other contract, agreement or arrangement; and

(b) to any action taken in relation to such a residential tenancy agreement or a tenant on or after 5 January 1986.

(2) This Act does not apply to a residential tenancy agreement—

15 (a) where the tenant is a party to an agreement for the sale and purchase of the residential premises;

(b) where the agreement arises under a mortgage in respect of the residential premises;

20 (c) where the agreement arises under a company title scheme under which—

(i) a group of adjacent premises is owned by a corporation; and

(ii) those premises are let by the corporation to persons who jointly have a controlling interest in the corporation;

25 (d) where the tenant is a boarder or a lodger; or

(e) where the agreement is made in good faith for the purpose of giving a person a right to occupy residential premises for a period of not more than 2 months for the purpose of a holiday.

(3) This Act does not apply to—

30 (a) any part of a hotel or motel;

(b) any premises ordinarily used for holiday purposes;

(c) any part of an educational institution, hospital or nursing home;

(d) any part of a club;

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- (e) any premises used as a home for an aged or a disabled person within the meaning of the Aged or Disabled Persons Homes Act 1954 of the Commonwealth; or
- 5 (f) controlled premises to which Parts II, III, IV and V of the Landlord and Tenant (Amendment) Act 1948 apply.

Exemptions from Act and other variations of application of Act

- 6. The regulations may provide that the provisions of this Act—
 - (a) do not have effect in relation to a specified person or a specified class of persons;
 - 10 (b) have effect in relation to a specified person or a specified class of persons to such extent as is specified;
 - (c) do not have effect in relation to a specified residential tenancy agreement or a specified class of residential tenancy agreements;
 - 15 (d) have effect in relation to a specified residential tenancy agreement or class of residential tenancy agreements to such extent as is specified;
 - (e) do not have effect in relation to specified premises or a specified class of premises; or
 - 20 (f) have effect in relation to specified premises or a specified class of premises to such extent as is specified.

PART 2

THE RESIDENTIAL TENANCIES TRIBUNAL OF NEW SOUTH WALES

DIVISION 1—*Constitution of the Tribunal*

25 Constitution of the Tribunal

- 7. (1) There is constituted by this Act a Residential Tenancies Tribunal of New South Wales which shall consist of—
 - (a) a person who is, or is qualified for appointment as, a Magistrate and is appointed by the Governor as Chairperson of the Tribunal;

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(b) such other full-time members who are barristers or solicitors, or who are eligible to be admitted as barristers or solicitors, of the Supreme Court as may be appointed by the Governor as full-time members of the Tribunal; and

5 (c) such part-time members as may be appointed by the Governor as part-time members of the Tribunal.

(2) The Chairperson and other full-time members shall devote the whole of their time to the duties of their offices under this Act, except as permitted by this Act or with the consent of the Minister.

10 (3) The Tribunal shall have a seal of which all courts and persons acting judicially shall take judicial notice.

Age of members

15 8. (1) A person of or above the age of 65 years is not eligible to be appointed as a full-time member or to act in the office of a full-time member.

(2) A person of or above the age of 70 years is not eligible to be appointed as a part-time member or to act in the office of a part-time member.

Immunity of members and others

20 9. A member, in the exercise of the functions of a member, and the Registrar and any Deputy Registrar, in the exercise of jurisdiction or functions conferred or delegated under this or any other Act, have the same protection and immunity as a Justice has in the exercise of the functions of a Justice under the Justices Act 1902.

25 Terms of office of members

10. (1) Subject to this Part, a member shall hold office for such period, not exceeding 5 years, as may be specified in the instrument of appointment of the member but is eligible (if otherwise qualified) for re-appointment.

30 (2) A member shall, before first sitting as a member, take an oath or make an affirmation in the prescribed form that the member will faithfully and impartially discharge the duties of the office of a member.

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Effect of certain other Acts

11. (1) The Public Service Act 1979 does not apply to or in respect of the appointment of a member and a member is not, as a member, subject to that Act.

- 5 (2) Where by or under any other Act provision is made requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or prohibiting the person from engaging in employment outside the duties of that office, that provision does not
 10 of a part-time member or from accepting and retaining any remuneration payable to the person under this Act as a part-time member.

Remuneration of members

12. (1) The Chairperson and any other full-time members are entitled to be paid—

- 15 (a) remuneration in accordance with the Statutory and Other Offices Remuneration Act 1975; and
 (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of them.

20 (2) A part-time member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the part-time member.

Casual vacancies in office of member

13. (1) A member shall be deemed to have vacated office if the member—

- 25 (a) dies;
 (b) is unavailable for duty as a member for a period of 28 consecutive days except on leave granted, in the case of the Chairperson, by the Minister, or in the case of any other member, by the Chairperson, before, during or after that period;
 30 (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;

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5 (d) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, or a person under detention under Part VII of that Act, or becomes a protected person within the meaning of the Protected Estates Act 1983;

10 (e) is convicted in New South Wales of an offence which is punishable by imprisonment for 12 months or upwards or is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be an offence so punishable;

(f) resigns the office by instrument in writing addressed to the Minister;

(g) being—

(i) a full-time member, attains the age of 65 years; or

15 (ii) a part-time member, attains the age of 70 years;

(h) being the Chairperson or another full-time member, is retired from office by the Governor under subsection (2); or

(i) is removed from office by the Governor under subsection (3).

20 (2) A full-time member may, after attaining the age of 60 years and before attaining the age of 65 years, be retired from office by the Governor and, if so retired, is entitled to such compensation (if any) as the Statutory and Other Offices Remuneration Tribunal determines.

(3) The Governor may remove a member from office for incapacity, incompetence or misbehaviour.

25 **Filling of vacancy in office of member**

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

Acting members and acting Chairperson

30 15. (1) The Governor may, from time to time, appoint a person to act in the office of a member during the illness or absence of the member, and the person, while so acting, shall have and may exercise all the functions of the member and shall be deemed to be a member.

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(2) The Governor may, from time to time, appoint another full-time member who is qualified to be appointed as Chairperson to act in the office of the Chairperson, and the full-time member, while so acting, shall have and may exercise all the functions of the Chairperson and shall be deemed
5 to be the Chairperson.

(3) The Governor may remove any person from any office to which the person was appointed under this section.

(4) A person while acting in the office of a member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the
10 Minister may from time to time determine in respect of the person.

(5) For the purposes of this section—

- (a) a vacancy in the office of a member or the Chairperson shall be deemed to be an absence from office of a member or the Chairperson, as the case may be; and
15
- (b) a full-time member shall be deemed to be absent from office as a member during any period when the member acts in the office of the Chairperson pursuant to an appointment under this section.

Superannuation and re-employment rights of full-time members

16. Schedule 1 has effect in relation to the rights of full-time members.

20 DIVISION 2—*Registrar, Deputy Registrars and staff of the Tribunal*

Registrar, Deputy Registrars and staff of the Tribunal

17. (1) A Registrar and Deputy Registrars of the Tribunal shall be employed under the Public Service Act 1979.

(2) The Registrar has, or Deputy Registrars have, such functions as are
25 conferred or imposed on the Registrar or Deputy Registrars by or under this or any other Act or by the Tribunal in the exercise of its functions.

(3) During the absence of the Registrar, a Deputy Registrar nominated by the Chairperson has and may exercise the functions of the Registrar and in so acting shall be deemed to be the Registrar.

30 (4) The Tribunal may—

- (a) with the approval of the Minister; and
(b) on such terms and conditions as may be approved by the Public Service Board,

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arrange for the use of the services of any staff or facilities of a government department, administrative office or public authority.

DIVISION 3—*Jurisdiction and functions of the Tribunal*

Jurisdiction and functions of the Tribunal

5 **18. (1)** The Tribunal has such jurisdiction as is, and such functions as are, conferred on it by or under this or any other Act.

(2) The Tribunal, wherever sitting, has jurisdiction throughout New South Wales.

(3) The Chairperson may, by instrument in writing, delegate to the
10 Registrar or a Deputy Registrar, with such limitations and on such conditions, as the Chairperson thinks fit—

 (a) the exercise of such part of the jurisdiction of the Tribunal as is prescribed for the purposes of this section; and

15 (b) the exercise of such other functions (other than the powers conferred by section 28 (8) and this power of delegation) as are conferred on the Chairperson,

and may, by instrument in writing, revoke (wholly or partly) the delegation.

(4) A delegation under this section of the exercise of jurisdiction or of a function does not prevent the exercise of the jurisdiction or function by the
20 Chairperson.

(5) A jurisdiction or function purporting to have been exercised by a delegate under this section shall, until the contrary is proved, be deemed to have been duly exercised by a delegate under this section.

Orders of the Tribunal

25 **19. (1)** The Tribunal may, in any proceedings before it, make one or more of the following orders:

 (a) an order that requires a party to the proceedings to pay an amount of money to a person specified in the order within such time as may be specified in the order;

30 (b) an order that an amount of money is not due or owing by a party to the proceedings to a person specified in the order;

 (c) an order that restrains any action in breach of a residential tenancy agreement by a party to the proceedings;

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- (d) an order that requires an action in performance of a residential tenancy agreement by a party to the proceedings;
- (e) an order, having effect for a period not exceeding 12 months, that declares that an amount of rent payable under a residential tenancy agreement is excessive and declares a maximum rent;
- (f) an order that recognises a person as a tenant under a residential tenancy agreement;
- (g) an order that varies or sets aside any order made in the proceedings or in earlier proceedings;
- (h) any other ancillary orders which the Tribunal thinks appropriate.
- (2) An order made under subsection (1) (c) or (d) may be made notwithstanding that it provides a remedy in the nature of an injunction or order for specific performance in circumstances in which such a remedy would not otherwise be available.
- (3) The Tribunal shall not make an order for the payment of an amount that exceeds \$5,000 or, where some other amount is prescribed for the purposes of this section, that other amount.

DIVISION 4—*Hearings***Making of applications to the Tribunal**

- (1) An application under this or any other Act may be made to the Tribunal by lodging a written application containing the prescribed particulars, together with the prescribed fee, with the Registrar.
- (2) The Registrar may waive payment of the prescribed fee where the Registrar is of the opinion, having regard to the means of the applicant and any other relevant matter, that it is appropriate to do so.

Notice of hearing and conduct of proceedings

- (1) The Chairperson or the Registrar shall fix a time and place for the holding of proceedings before the Tribunal and shall notify each party to the proceedings in the prescribed manner of that time and place.
- (2) The Tribunal shall give each party to proceedings before it a reasonable opportunity to call or give evidence, examine or cross-examine witnesses and make submissions to the Tribunal.
- (3) If a party to proceedings before the Tribunal who has been notified under this section fails to attend at the time and place notified, the proceedings may be held in the absence of the party.

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Parties to proceedings and recognition of tenants

22. (1) Where a party to proceedings before the Tribunal has a right to proceed against 2 or more persons having a joint liability, it is sufficient if any one or more of those persons is or are served with process in the proceedings, and a decision in the proceedings may be given or entered up and enforced against the person or persons subject to the liability.

(2) Section 97 (Joint liability) of the Supreme Court Act 1970 applies to and in respect of a decision given or entered up in proceedings before the Tribunal in the same way as it applies to and in respect of a judgment given in proceedings before the Supreme Court.

(3) A legal personal representative may bring or defend proceedings before the Tribunal as if the representative were bringing or defending proceedings in the representative's own right.

(4) Where, at any time before or during proceedings before the Tribunal, the Tribunal is of the opinion that a person ought to be joined as a party to the proceedings, the Tribunal may, by notice in writing given to the person or by oral direction given during the proceedings, join the person as a party to the proceedings.

(5) Where, at any time before or during proceedings before the Tribunal, the Tribunal is of the opinion that a person who is not a party to the residential tenancy agreement should be recognised as a tenant, the Tribunal may make an order that recognises the person as a tenant and, if appropriate, join the person as a party to the proceedings.

(6) A person recognised as a tenant under this section shall be deemed, for the purposes of this or any other Act and of the relevant residential tenancy agreement, to be a tenant under that agreement.

Amendment of application

23. The Tribunal may, at any stage during the holding of proceedings before it, make such amendment of the application to which the proceedings relate as it thinks fit either at the request of the applicant or of its own motion with the approval of the applicant.

Adjournment of proceedings

24. (1) The Tribunal may from time to time adjourn proceedings before it to such times and places and for such purposes as it considers necessary or desirable.

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(2) The Registrar shall cause to be given to any party to proceedings that have adjourned who is not present or represented at the time when the proceedings are adjourned a notice of the time and place to which the proceedings are adjourned.

5 Proceedings before the Tribunal

25. (1) Proceedings before the Tribunal shall be held as in open court.

(2) Sittings of the Tribunal, and the constitution of the Tribunal at each sitting, shall be arranged and determined by the Chairperson.

(3) Proceedings before the Tribunal shall be heard and determined by one
10 member sitting alone.

(4) In any proceedings before it, the Tribunal—

(a) is not bound by the rules of evidence and may inform itself on any matter in such manner as it thinks fit; and

(b) shall act according to equity, good conscience and the substantial
15 merits of the case without regard to technicalities or legal forms.

(5) The Tribunal may, in proceedings before it, request a report from, or other assistance by, the Commissioner for Consumer Affairs.

Presentation of cases

26. (1) Each party to proceedings before the Tribunal shall have the
20 carriage of the party's own case.

(2) A party to proceedings before the Tribunal or a person who applies to be made a party to the proceedings is not entitled to be represented by any other person unless the representation is approved by the Tribunal.

(3) The Tribunal shall not approve of another person representing a party
25 in proceedings before it unless it appears to the Tribunal—

(a) that the representation should be permitted as a matter of necessity;

(b) that the party would otherwise be unfairly disadvantaged; or

(c) in the case of a landlord—that the landlord's agent should be
30 permitted to represent the landlord in the course of carrying out his or her usual functions as the landlord's agent,

and the Tribunal is of the opinion that any other party will not be unfairly disadvantaged by the representation.

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(4) This section does not prevent an officer (within the meaning of the Companies (New South Wales) Code) of a corporation from representing that corporation.

5 (5) Contravention of any provision of this section does not invalidate any proceedings before the Tribunal in which the contravention occurs or any order made in those proceedings by the Tribunal.

Procedure of the Tribunal

10 27. If the manner or form of procedure for taking any step in proceedings before the Tribunal is not prescribed by this Act, the member before whom the proceedings are being or are to be held may direct what manner or form of procedure is to be followed, and any step taken in accordance with a direction so given is, for the purposes of the proceedings, regular and sufficient.

Summons and examination of witnesses

15 28. (1) The Registrar shall, at the direction of the Tribunal in proceedings before it or at the request of a party to any such proceedings, issue a summons requiring a person to attend the proceedings at a time and place specified in the summons as a witness to give evidence or produce any record in the person's custody or under the person's control that the
20 person is required by the summons to produce.

(2) It is sufficient compliance with a summons issued only for the production of a record if the record is produced to the Registrar or a Deputy Registrar at such address as may be specified for that purpose in the summons at any time before the proceedings at which the record is required
25 to be produced.

(3) Where a person is required by a summons to produce a record and the record is not in writing, or is not written in the English language, or is not decipherable on sight, the summons shall be deemed to require the person to produce, in addition to the record if it is in writing, or instead of
30 the record if it is not in writing, a statement, written in the English language and decipherable on sight, containing the whole of the information in the record.

(4) The member before whom proceedings are being held may administer an oath to any person appearing as a witness before the Tribunal, whether
35 or not the witness has been summoned, and allow the witness to be examined and cross-examined on oath.

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(5) A witness summoned to attend or appearing before the Tribunal has the same protection and, without affecting any penalty that may be imposed under this Act, is subject to the same liabilities as a witness would have or be subject to in proceedings before a Local Court.

5 (6) A witness summoned at the direction of the Tribunal is entitled to be paid such fees and allowances as are prescribed.

(7) A summons issued at the request of a party does not have effect unless, not later than a reasonable time before the day on which the attendance of the witness is required by the summons, tender is made of
10 an amount in respect of the reasonable expenses of complying with the requirements of the summons.

(8) Where a person fails to attend the proceedings at a time and place specified in a summons under this section—

15 (a) the Chairperson has all the functions of a Justice under section 66 of the Justices Act 1902 to issue a warrant for the apprehension of the person and to further deal with that person; and

(b) section 66 of the Justices Act 1902 applies to the exercise of those functions as if a reference in that section—

20 (i) to a person who does not appear at a time and place appointed by a summons and who is a witness—were a reference to the person;

(ii) to a Justice—were a reference to the Chairperson; and

25 (iii) to costs and expenses—were a reference to such fees and allowances as are prescribed or the reasonable expenses of complying with the requirements of the summons, as the case requires.

(9) Sections 64 and 65 of the Justices Act 1902 apply to a warrant issued by the Chairperson in the same way as they apply to a warrant issued under section 66 of that Act.

30 Evidence before the Tribunal

29. In proceedings before the Tribunal, the Tribunal may, in its discretion—

35 (a) receive in evidence the transcript of evidence in any proceedings before a court or tribunal, whether constituted in the State or elsewhere, and draw any conclusions of fact from that transcript that it considers proper;

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- (b) adopt any finding, decision or judgment of a court or tribunal that may be relevant to the proceedings; and
- (c) receive in evidence any report of the Commissioner for Consumer Affairs that may be relevant to the proceedings but only if a copy of that report has been made available for inspection by every party present at the proceedings.

Inspection and retention of records

30 **30. (1)** The Tribunal may inspect any record or statement produced before it and may retain it for such period as it thinks necessary for the purposes of the proceedings in relation to which it was produced and may make copies of the record or statement or any part of the record or statement.

15 **(2)** Where a record or statement is produced before, and retained by, the Tribunal, the person otherwise entitled to possession of the record or statement is, on request, entitled to be supplied, as soon as practicable, with a copy certified by the Registrar or a Deputy Registrar to be a true copy and a record or statement so certified is admissible as evidence in all courts as if it were the original record or statement.

Referral of questions of procedure and law to Supreme Court by Tribunal

20 **31. (1)** A reference under this section shall be made in accordance with rules of the Supreme Court.

(2) Any question with respect to procedure that arises in proceedings before the Tribunal shall be decided by the Tribunal in the proceedings.

25 **(3)** Where, in proceedings before the Tribunal, a question arises with respect to a matter of law, the Tribunal may decide the question or may refer it to the Supreme Court for decision.

(4) Where a question with respect to a matter of law is referred to the Supreme Court by the Tribunal—

- 30 (a) the Tribunal shall not make an order or decision to which the question is relevant until the Supreme Court has decided the question;
- (b) on deciding the question, the Supreme Court shall remit its decision to the Tribunal; and
- 35 (c) the Tribunal shall not proceed in a manner, or make an order or decision, that is inconsistent with the decision of the Supreme Court.

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(5) For the purposes of this section, a reference to a matter of law includes a reference to a matter relating to the jurisdiction of the Tribunal.

Appeal against decision of Tribunal with respect to matter of law

32. (1) An appeal under this section shall be made in accordance with
5 rules of the Supreme Court.

(2) Where, in proceedings before the Tribunal, the Tribunal decides a question with respect to a matter of law, a party to the proceedings who is dissatisfied with the decision may appeal to the Supreme Court against the decision.

10 (3) After deciding the question the subject of an appeal by a party under this section, the Supreme Court may, unless it affirms the decision of the Tribunal on the question—

(a) make such order in relation to the proceedings in which the
15 question arose as, in its opinion, should have been made by the Tribunal; or

(b) remit its decision on the question to the Tribunal and order a re-hearing of the proceedings before the Tribunal.

(4) Where a re-hearing is held, the Tribunal shall not proceed in a manner, or make an order or decision, that is inconsistent with the decision
20 of the Supreme Court remitted to the Tribunal.

(5) Where a party to proceedings before the Tribunal has appealed to the Supreme Court against a decision of the Tribunal on a question with respect to a matter of law, either the Tribunal or the Supreme Court may suspend, until the appeal is determined, the operation of any order or decision made
25 in the proceedings.

(6) Where the Tribunal suspends the operation of an order or decision, the Tribunal or the Supreme Court may terminate the suspension or, where the Supreme Court has suspended the operation of an order or decision, the Supreme Court may terminate the suspension.

30 (7) For the purposes of this section, a reference to a matter of law includes a reference to a matter relating to the jurisdiction of the Tribunal.

Dismissal of frivolous, etc., proceedings

33. (1) Where, at any stage of proceedings before the Tribunal, the Tribunal is satisfied that the proceedings are frivolous, vexatious,
35 misconceived or lacking in substance, or that for any other reason the proceedings should not be entertained, it may dismiss the proceedings.

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(2) Where the Tribunal dismisses proceedings under this section, it may order the person who brought the proceedings to pay the costs of the proceedings.

Tribunal to attempt to conciliate

5 34. (1) The Tribunal shall not make an order in respect of an application made to it until it has brought, or used its best endeavours to bring, the parties to a settlement acceptable to all of them.

(2) Where such a settlement is made, the Tribunal shall make an order that, to the extent authorised by that settlement, gives effect to the terms of
10 the settlement.

Applications for variation or setting aside of orders

35. A person who is or was a party to any proceedings before the Tribunal may apply for an order varying or setting aside an order made in those proceedings and in force at the time of the application.

15 No appeal from order of Tribunal

36. Except as provided by sections 32 (Appeal against decision of Tribunal with respect to matter of law) and 35 (Applications for variation or setting aside of orders), an order of the Tribunal shall be final and binding on all parties to the proceedings in which the order is made and no appeal
20 shall lie in respect of such an order.

Orders for payment of money

37. (1) Where an order of the Tribunal is for payment of an amount of money (including any amount awarded as costs) the order shall, on the filing of the prescribed documents in the office or registry of a court having
25 jurisdiction to order the payment of such an amount of money, be deemed to be a judgment of that court for the payment of that amount of money in accordance with the order of the Tribunal.

(2) For the purposes of subsection (1), the prescribed documents are—

- 30 (a) a copy of the order of the Tribunal certified by the Registrar or a Deputy Registrar to be a true copy; and
- (b) an affidavit by the person to whom the amount of money was ordered to be paid specifying the amount unpaid under the order and, where the order is to take effect on any default, as to the default.

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(3) Notwithstanding anything in any other Act, no fee is payable for the filing of documents under this section.

No costs allowable

38. Except as provided by section 33 (Dismissal of frivolous, etc., proceedings), costs shall not be allowed to or against any party to proceedings before the Tribunal.

Reasons for decision of Tribunal

39. (1) The Tribunal shall, at the conclusion of proceedings before it, state in writing its reason for any order or decision made in the proceedings.

10 (2) The Registrar shall, within 14 days of the receipt of a request by a party to concluded proceedings, give to the party a copy of the Tribunal's reasons for any decision or order made in those proceedings.

Contempt of Tribunal

40. (1) A person shall not wilfully contravene or fail to comply with an order (not being an order for the payment of an amount of money) or decision of the Tribunal.

Penalty: 50 penalty units or 12 months' imprisonment, or both.

20 (2) The Tribunal, when constituted by the Chairperson, has the same functions in relation to a contempt committed in the face of the Tribunal as it would have if the Tribunal were a Local Court constituted by a Magistrate sitting alone.

25 (3) The Supreme Court has the same functions in relation to a contempt of the Tribunal (whether or not it is constituted by the Chairperson) as it has in relation to a contempt of a Local Court constituted by a Magistrate sitting alone.

(4) Where the Tribunal is constituted by a member other than the Chairperson, a person shall not—

- (a) wilfully insult the Tribunal;
- (b) wilfully misbehave during proceedings before the Tribunal;
- 30 (c) wilfully and without lawful excuse interrupt proceedings before the Tribunal; or
- (d) without lawful excuse disobey a direction of the Tribunal during proceedings before the Tribunal.

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Penalty: 5 penalty units or 6 months' imprisonment, or both.

(5) Where the Tribunal is constituted by a member other than the Chairperson, the Tribunal may, in proceedings before it, direct a person who does anything referred to in subsection (4) to leave and a person to whom such a direction is given shall comply with the direction.

Penalty—subsection (5): 5 penalty units.

Reference of certain matters concerning landlords' agents

41. The Tribunal may, where it considers it appropriate, bring the conduct of a landlord's agent in a particular matter to the attention of the registrar of the Council of Auctioneers and Agents under the Auctioneers and Agents Act 1941 or the Commissioner for Consumer Affairs, or both.

PART 3

COMMISSIONER FOR CONSUMER AFFAIRS

Functions of Commissioner for Consumer Affairs conferred by this Act

42. The Commissioner for Consumer Affairs has, in addition to any other functions conferred or imposed on the Commissioner, the following functions:

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

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- (ii) distribute information about residential tenancy agreements; or
- (iii) carry out research into matters relating to or affecting the relationship between landlords and tenants.

5 Commissioner for Consumer Affairs may represent tenant

43. In any proceedings before the Tribunal, a tenant may, notwithstanding anything in section 26 (Presentation of cases), be represented by the Commissioner for Consumer Affairs or by a barrister, solicitor or agent for the Commissioner.

10 Commissioner for Consumer Affairs may act on behalf of tenants

44. (1) Where a tenant, not being a body corporate, has made a complaint to the Commissioner for Consumer Affairs and the Commissioner, after investigating the complaint, is satisfied that—

- 15 (a) the tenant may have a right to take or defend proceedings before the Tribunal and the Commissioner is of the opinion that it is in the public interest that the Commissioner should take or defend those proceedings on behalf of the tenant; or
- (b) the Minister directs that the Commissioner take or defend proceedings before the Tribunal,

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

(2) A consent by a tenant to the taking or defending by the Commissioner of proceedings before the Tribunal on behalf of the tenant is irrevocable unless the Commissioner consents to revocation of the consent.

25 Conduct of proceedings taken by Commissioner for Consumer Affairs

45. Where the Commissioner for Consumer Affairs takes or defends proceedings before the Tribunal on behalf of a tenant—

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

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- (c) the tenant is liable to pay any other amount that the Tribunal orders the tenant to pay.

Intervention by Commissioner for Consumer Affairs

46. (1) Without limiting section 44, the Commissioner for Consumer Affairs may, if the Commissioner is of the opinion that it would be in the public interest to do so, or, at the direction of the Minister shall, intervene, and has a right to be heard personally or by barrister, solicitor or agent, in any proceedings arising under any Act before the Tribunal.

10 (2) The Commissioner, on intervening under this section in any proceedings, becomes a party to the proceedings and has all the rights of such a party.

Delegation by Commissioner for Consumer Affairs

15 47. (1) The Commissioner for Consumer Affairs may delegate to a person the exercise of any of the Commissioner's functions under this Act, other than this power of delegation.

(2) A delegation under this section—

(a) shall be in writing;

(b) may be general or limited; and

(c) may be revoked (wholly or partly) by the Commissioner.

20 (3) A delegate is, in the exercise of a function delegated under this section, subject to such conditions as are specified in the instrument of delegation.

(4) A function delegated under this section, when exercised by the delegate, shall be deemed to have been exercised by the Commissioner.

25 (5) A delegation under this section does not prevent the exercise of a function by the Commissioner.

(6) A function purporting to have been exercised by a delegate under this section shall, until the contrary is proved, be deemed to have been duly exercised by a delegate under this section.

30 Office and identification of investigating officer

48. (1) The Commissioner for Consumer Affairs may designate an officer as an investigating officer for the purposes of this Act.

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(2) The Minister may provide an investigating officer with a certificate of identification as an investigating officer.

(3) An investigating officer shall not—

(a) exercise the powers conferred by section 49; or

5 (b) receive information or evidence given, or a document produced, in compliance with a notice under section 49,

unless he or she is the holder of a certificate of identification.

(4) An investigating officer who exercises in any place a function conferred by section 49 shall, if requested by a person apparently in charge
10 in that place, or apparently in charge of any work being carried on in that place, produce his or her certificate of identification.

(5) An investigating officer shall, on being requested to do so by a person who proposes to give to the investigating officer information or evidence, or to produce a document, in compliance with a notice under section 49,
15 produce his or her certificate of identification.

(6) No liability is incurred by an investigating officer for any act done or omitted by the officer in good faith in the course of the administration of this Act.

Power of investigating officer to obtain information, documents and evidence

20 **49. (1)** Where an investigating officer believes on reasonable grounds that a person is capable of giving information, producing documents or giving evidence in relation to a matter that constitutes, or may constitute, a contravention of this Act, the investigating officer may, by notice in writing given to the person, require the person—

25 (a) to provide an investigating officer, by writing signed by the person (or, in the case of a body corporate, by a competent officer of the body corporate) and given to the investigating officer within the time and in the manner specified in the notice, with any such information;

30 (b) to produce to an investigating officer, in accordance with the notice, any such documents; or

(c) to appear before an investigating officer at a time and place specified in the notice and give any such evidence, either orally or in writing, and produce any such documents.

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(2) Where an investigating officer believes on reasonable grounds that a person has engaged, or is engaging, in conduct that constitutes, or may constitute, a contravention of this Act, the investigating officer may, for the purpose of ascertaining by the examination of documents in the possession or control of the person whether the person has engaged, or is engaging, in that conduct, enter any premises and inspect any documents in the possession or under the control of the person and make copies of, or take extracts from, those documents.

(3) A person shall not—

- 10 (a) refuse or fail to comply with a notice under this section to the extent that the person is capable of complying with it; or
- (b) in purported compliance with such a notice, knowingly provide information, or give evidence, that is false or misleading.

Penalty: 5 penalty units.

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

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

Inspection of documents by Commissioner for Consumer Affairs and others

25 50. (1) The Commissioner for Consumer Affairs, a person authorised by the Commissioner or an investigating officer may inspect a document produced in accordance with a notice under section 49 and may make copies of, or take extracts from, the document.

(2) For the purposes of this Act, the Commissioner or an investigating officer may—

- (a) take possession; and
- 30 (b) retain possession for as long as is necessary for those purposes, of a document produced in accordance with a notice under section 49.

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

Residential Tenancies Tribunal 1986

(4) Until a certified copy of a document is provided under this section, the person having custody of the document shall, at such times and places as the person thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by the person so entitled, to inspect the document and make copies of, or take extracts from, the document.

PART 4

RENTS

DIVISION 1—*Rent increases and excessive rents*

10 Variation of rent

51. (1) The rent payable by a tenant under a residential tenancy agreement shall not be increased except by notice in writing given to the tenant specifying the amount of the increased rent and the day from which the increased rent is payable.

15 (2) A day specified as the day from which increased rent is payable shall not be less than 60 days after the day on which notice of the increase was given under this section.

20 (3) A notice of increase of rent given in accordance with this section (and not withdrawn by the landlord or the landlord's agent or affected by any order of the Tribunal) varies the residential tenancy agreement so that the increased rent specified in the notice is payable under the agreement from the day specified in the notice.

25 (4) The rent payable by a tenant under a residential tenancy agreement that creates a tenancy for a fixed term shall not be increased during the currency of the term—

(a) unless the agreement provides that the rent may be increased during the term; and

(b) unless the rent is increased in accordance with this section.

30 (5) Subsection (2) does not apply to or in respect of a residential tenancy agreement where the landlord is the New South Wales Land and Housing Corporation.

Penalty: 5 penalty units.

*Residential Tenancies Tribunal 1986***Tenant may apply to Tribunal for an order that a rent increase or rent is excessive**

52. (1) A tenant may apply to the Tribunal for an order declaring that a rent increase is excessive not later than 30 days—

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

10 (2) A tenant may, at any time, apply to the Tribunal for an order declaring that the rent payable under a residential tenancy agreement or a proposed residential tenancy agreement for residential premises already occupied by the tenant is excessive, having regard to the reduction or withdrawal by the landlord of any goods, services or facilities provided with the premises, whether or not they are provided under the agreement or a

15 separate contract, agreement or arrangement or were provided under a previous contract, agreement or arrangement.

(3) The Tribunal may, in determining whether or not a rent increase or rent payable under a residential tenancy agreement or proposed residential tenancy agreement for residential premises is excessive, have regard to the

20 general market level of rents for comparable premises (other than premises let by a government department, administrative office or public authority) in the locality or a similar locality and may also have regard to—

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

Residential Tenancies Tribunal 1986

(4) Where the Tribunal determines under this section that a rent increase or rent is excessive, the Tribunal may make an order declaring that the rent increase or rent is excessive and may—

- 5 (a) in the case of a rent increase—order that from a day specified by the Tribunal, not being earlier than the day from which the increased rent was payable, the rent shall not exceed an amount specified by the Tribunal; or
- 10 (b) in the case of rent—order that from a day specified by the Tribunal, not being earlier than the date of the tenant's application to the Tribunal, the rent shall not exceed an amount specified by the Tribunal,

and may make such other orders as it thinks fit.

(5) An order made under this section by the Tribunal specifying a maximum amount of rent—

- 15 (a) has effect for such period, not exceeding 12 months, as is specified by the Tribunal in the order; and
- (b) binds only the parties to the residential tenancy agreement or the proposed residential tenancy agreement under which the rent is payable.

20 (6) A person shall not demand, require or receive any rent from a tenant of an amount exceeding an amount specified by the Tribunal under this section in relation to the tenant's occupation of the residential premises.

Penalty: 5 penalty units.

25 (7) A court before which proceedings for an offence under subsection (6) have been brought or the Tribunal, on application by a tenant, may order that a person who has committed an offence under subsection (6) pay to the tenant an amount equal to the amount of any rent unlawfully received from the tenant.

30 (8) Where the residential premises occupied by a tenant are held under a residential tenancy agreement and goods or fittings in, or connected with the tenant's occupation of, the premises are let to the tenant by a separate agreement or agreements, the Tribunal may, in making any order under this section, declare the separate agreements to be part of the residential tenancy agreement and may make orders under this section in respect of those

35 agreements as if any amounts payable under them were payable under the residential tenancy agreement.

*Residential Tenancies Tribunal 1986***Interim orders suspending rent increases**

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

DIVISION 2—Offences**Consideration for residential tenancy agreement to be rent and rental bond only**

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

Penalty: 20 penalty units.

15 Rent in advance

55. (1) A person shall not require or receive, before or during the first 2 weeks of the tenancy under a residential tenancy agreement, as rent under the agreement—

- 20 (a) in the case of rent which does not exceed the prescribed amount—
an amount exceeding 2 weeks' rent under the agreement; or
- (b) in the case of rent which is equal to or exceeds the prescribed amount—an amount exceeding 4 weeks' rent under the agreement.

25 (2) A person shall not require or receive any payment of rent (other than the first payment) under a residential tenancy agreement until the period of the tenancy in respect of which any previous payment has been made has expired.

Penalty: 5 penalty units.

Payment of rent by post-dated cheque, etc., prohibited

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

Penalty: 5 penalty units.

Residential Tenancies Tribunal 1986

Rent receipts to be issued

57. (1) Any person who receives payment of rent under a residential tenancy agreement shall, if rent is paid in person, forthwith give or cause to be given to the person making the payment a receipt for the payment.

5 (2) Where rent is not paid in person, the landlord or the landlord's agent shall, on receipt of the rent, prepare or cause to be prepared a receipt for the rent and make the receipt available for collection by the tenant.

(3) A receipt for rent given or prepared under this section shall contain the following particulars:

- 10 (a) the name of the person who receives the rent or on whose behalf the rent is received;
- (b) the name of the person paying the rent or on whose behalf the rent is paid;
- (c) the address of the residential premises for which the rent is paid;
- 15 (d) the period for which the rent is paid;
- (e) the date on which the rent is received;
- (f) the amount of rent paid.

(4) A person who contravenes or fails to comply with this section is guilty of an offence and liable to a penalty of 5 penalty units.

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

Records of rent to be kept

25 58. (1) A landlord or the landlord's agent under a residential tenancy agreement shall keep, or cause to be kept, a record showing rent received under the agreement.

(2) A record showing rent received and copies of all rent receipts issued by or on behalf of a landlord under a residential tenancy agreement shall be kept by the landlord or the landlord's agent under the agreement for a 30 period of not less than 12 months succeeding the termination of the tenancy.

Penalty: 5 penalty units.

False or misleading statements

59. A person shall not knowingly make to a tenant or a prospective tenant a false or misleading statement or representation, whether oral or written, concerning the rights and remedies of the tenant or prospective
5 tenant under this Act.

Penalty: 50 penalty units.

PART 5**MISCELLANEOUS****Contracting out prohibited**

10 60. The provisions of this Act have effect notwithstanding any stipulation to the contrary and no residential tenancy agreement, contract or other agreement or arrangement, whether oral or in writing and made or entered into before or after the commencement of this section, operates to annul, vary or exclude any of the provisions of this Act.

15 Disclosure of information

61. A person shall not disclose any information obtained in connection with the administration or execution of this Act (or any other Act conferring or imposing functions on the Tribunal) unless that disclosure is made—

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

Penalty: 5 penalty units.

*Residential Tenancies Tribunal 1986***Shortened references to the Tribunal**

62. In any other Act, in any instrument made under any Act or in any other instrument of any kind, except in so far as the context or subject-matter otherwise indicates or requires, a reference to the Residential
 5 Tenancies Tribunal shall be read as a reference to the Residential Tenancies Tribunal of New South Wales constituted by this Act.

Authentication of certain documents

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

Evidence and proceedings

64. (1) In any legal proceedings, proof is not required (until evidence
 15 is given to the contrary) of—

(a) the constitution of the Tribunal; or

(b) the appointment of, or the holding of office by, any member.

(2) Proceedings for an offence against this Act shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

20 Costs of administration

65. The costs of administration of this Act in any year shall not, so far as is practicable, exceed the amount of contributions paid for that purpose from the Auctioneers and Agents Statutory Interest Account under the Auctioneers and Agents Act 1941 and the Rental Bond Interest Account
 25 under the Landlord and Tenant (Rental Bonds) Act 1977.

Penalty units

66. A reference in this Act to a number (whether fractional or whole) of penalty units shall be deemed to be a reference to an amount of money equal to the amount obtained by multiplying \$100 by that number of
 30 penalty units.

Offences by corporations

5 **67. (1)** Where a corporation contravenes, whether by act or omission, any provision of this Act, each person who is a director of the corporation or who is concerned in the management of the corporation shall be deemed to have contravened the same provision unless the person satisfies the court that—

- (a) the corporation contravened the provision without the knowledge of the person;
- 10 (b) the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision; or
- (c) the person, being in such a position, used all due diligence to prevent the contravention by the corporation.

15 **(2)** A person may be proceeded against and convicted under a provision pursuant to this section whether or not the corporation has been proceeded against or been convicted under that provision.

(3) Nothing in this section affects the liability imposed on a corporation for an offence committed by the corporation against this Act.

20 **(4)** This section does not apply to or in respect of a person who is a director of, or who is concerned in the management of, a corporation which is constituted by or under an Act.

Service of documents

68. (1) A notice or other document required to be given to a tenant under this Act may be served—

- 25 (a) by delivering it personally to the tenant or a person apparently of or above the age of 16 years by whom the rent payable by the tenant is ordinarily paid;
- (b) by delivering it to the residential premises occupied by the tenant and by leaving it there with some person apparently of or above the age of 16 years for the tenant;
- 30 (c) by sending it by post to the residential premises occupied by the tenant; or
- (d) in such other manner as may be prescribed for the purposes of this section or approved by the Tribunal.

Residential Tenancies Tribunal 1986

(2) A notice or other document required to be given to a landlord under this Act may be served—

- 5 (a) by delivering it personally to the landlord, the landlord's agent or a person apparently of or above the age of 16 years to whom the rent payable to the landlord is ordinarily paid;
- (b) by sending it by post; or
- (c) in such other manner as may be prescribed for the purposes of this section or approved by the Tribunal.

10 (3) A document or application given or made to the Tribunal may be served on the Tribunal or lodged with the Registrar by leaving it at, or by sending it by post to—

- (a) the office of the Tribunal; or
- (b) if it has more than one office—any one of its offices.

15 (4) Nothing in subsection (3) affects the operation of any provision of a law or of the rules of a court authorising a document to be served on the Tribunal in a manner not provided for by subsection (3).

Regulations

20 69. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to—

- 25 (a) the procedure and practice to be followed in proceedings before the Tribunal (including the practice and procedure to be followed in the office of the Registrar) and any incidental or related matters;
- (b) regulating, or empowering the Registrar to regulate, the business of the Tribunal and empowering the Chairperson or the Registrar to give directions as to the steps to be taken to make any proceedings before the Tribunal ready for hearing;
- 30 (c) the duties of, and the records to be kept by, the Registrar in relation to, or for the purposes of, any proceedings before the Tribunal;
- (d) the service of notices under this Act on persons other than landlords and tenants; and
- 35 (e) fees to be paid under this Act.

Residential Tenancies Tribunal 1986

(2) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

(3) A provision of a regulation may—

- 5 (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind; or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,
- 10 or may do any combination of those things.

Savings, transitional and other provisions

70. Schedule 2 has effect.

SCHEDULE 1

(Sec. 16)

15 **RIGHTS OF FULL-TIME MEMBERS**

Preservation of rights of full-time member previously public servant, etc.

1. (1) Subject to subclause (2) and to the terms of appointment, where a full-time member was, immediately before being appointed as a full-time member—

- (a) an officer of the Public Service or a Teaching Service;
- 20 (b) a contributor to a superannuation scheme;
- (c) an officer employed by a statutory body; or
- (d) a person in respect of whom provision was made by any Act for the retention of any rights accrued or accruing to the person as an officer or employee,
- he or she—
- 25 (e) shall retain any rights accrued or accruing to him or her as such an officer, contributor or person;
- (f) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before being appointed as a full-time member; and
- 30 (g) shall be entitled to receive any deferred or extended leave and any payment, pension or gratuity,

*Residential Tenancies Tribunal 1986*SCHEDULE 1—*continued*RIGHTS OF FULL-TIME MEMBERS—*continued*

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

- 5 (h) his or her service as a full-time member shall be deemed to be service as an officer or employee for the purpose of any law under which those rights accrued or were accruing, under which he or she continues to contribute or by which that entitlement is conferred; and
- (i) he or she shall be deemed to be an officer or employee for the purposes of the superannuation scheme to which he or she is entitled to contribute under this clause.
- 10 (2) If the full-time member would, but for this subclause, be entitled under subclause (1) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under the scheme, he or she shall not be so entitled on becoming (whether on appointment as a full-time member or at any later time while holding office as a full-time member) a contributor to any other superannuation scheme, and the provisions of
- 15 subclause (1) (i) cease to apply to or in respect of him or her in any case where he or she becomes a contributor to any such other superannuation scheme.
- (3) Subclause (2) does not prevent the payment to a full-time member on his or her ceasing to be a contributor to a superannuation scheme of such amount as would have been payable to him or her if he or she had ceased, by reason of resignation, to be an
- 20 officer or employee for the purposes of the scheme.
- (4) A full-time member shall not, in respect of the same period of service, be entitled to claim a benefit under this Act and another Act.
- (5) In this clause—
- 25 “statutory body” means any body declared under clause 3 to be a statutory body for the purposes of this Schedule;
- “superannuation scheme” means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under any Act.

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

- 30 2. (1) A person who—
- (a) ceases to be a full-time member by reason of the expiration of the period for which the person was appointed or by reason of resignation;
- (b) was, immediately before being appointed as a full-time member—
- 35 (i) an officer of the Public Service or a Teaching Service; or
- (ii) an officer or employee of a statutory body; and
- (c) has not attained the age at which the person would have been entitled to retire had the person continued to be such an officer or employee,

Residential Tenancies Tribunal 1986

SCHEDULE 1—*continued*

RIGHTS OF FULL-TIME MEMBERS—*continued*

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

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

(a) was, immediately before being appointed to a full-time office constituted by an Act, an officer or employee referred to in subclause (1) (b); and

(b) is after that appointment appointed as a full-time member,

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

(3) In this clause—

15 “statutory body” means any body declared under clause 3 to be a statutory body for the purposes of this Schedule.

Declaration of statutory bodies

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

SCHEDULE 2

20

(Sec. 70)

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

Liability for certain offences

1. A person is not liable for a contravention of, or failure to comply with, section 51 or sections 54–58 (1) where the offence occurred on or after 5 January 1986 and before
25 the commencement of those provisions.

Extension of time for certain applications to the Tribunal

2. A tenant may apply to the Tribunal, not later than 30 days after the commencement of section 52, for an order under that section and the Tribunal may make such an order declaring that a rent increase is excessive, where notice of the rent increase
30 was given on or after 5 January 1986 and before the commencement of that section.

*Residential Tenancies Tribunal 1986*SCHEDULE 2—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued***Savings and transitional regulations**

3. (1) The regulations may contain other provisions of a savings or transitional nature consequent on the enactment of this Act and the Landlord and Tenant (Amendment) Act 1986.
- 5 (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect as from the date of assent to this Act or a later day.
- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—
- 10 (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication in the Gazette; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its
- 15 publication in the Gazette.
- (4) A provision referred to in subclause (1) shall, if the regulations so provide, have effect notwithstanding any other clause of this Schedule.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1986

RESIDENTIAL TENANCIES TRIBUNAL BILL

Schedule of amendments referred to in Legislative Council's Message of 29 April 1986

- No. 1—Page 28, clause 54, line 13. After “bond”, insert “**and such fees as may be prescribed**”.
 - No. 2—Page 28, clause 55, lines 15–27. Omit all words on those lines.
 - No. 3—Page 28, clause 56, line 29. Omit “or receive”.
 - No. 4—Page 36, Schedule 2, line 20. Omit “70”, insert “**69**”.
 - No. 5—Page 36, Schedule 2, clause 1, line 24. Omit “54–58 (1)”, insert “**54–57 (1)**”.
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118 THE HISTORY OF THE UNITED STATES

The first part of the book is devoted to a general history of the United States from its discovery to the present time. It is divided into three parts: the first part contains the history of the discovery and settlement of the continent; the second part contains the history of the colonies; and the third part contains the history of the United States from its independence to the present time.

RESIDENTIAL TENANCIES TRIBUNAL ACT 1986 No. 60

NEW SOUTH WALES



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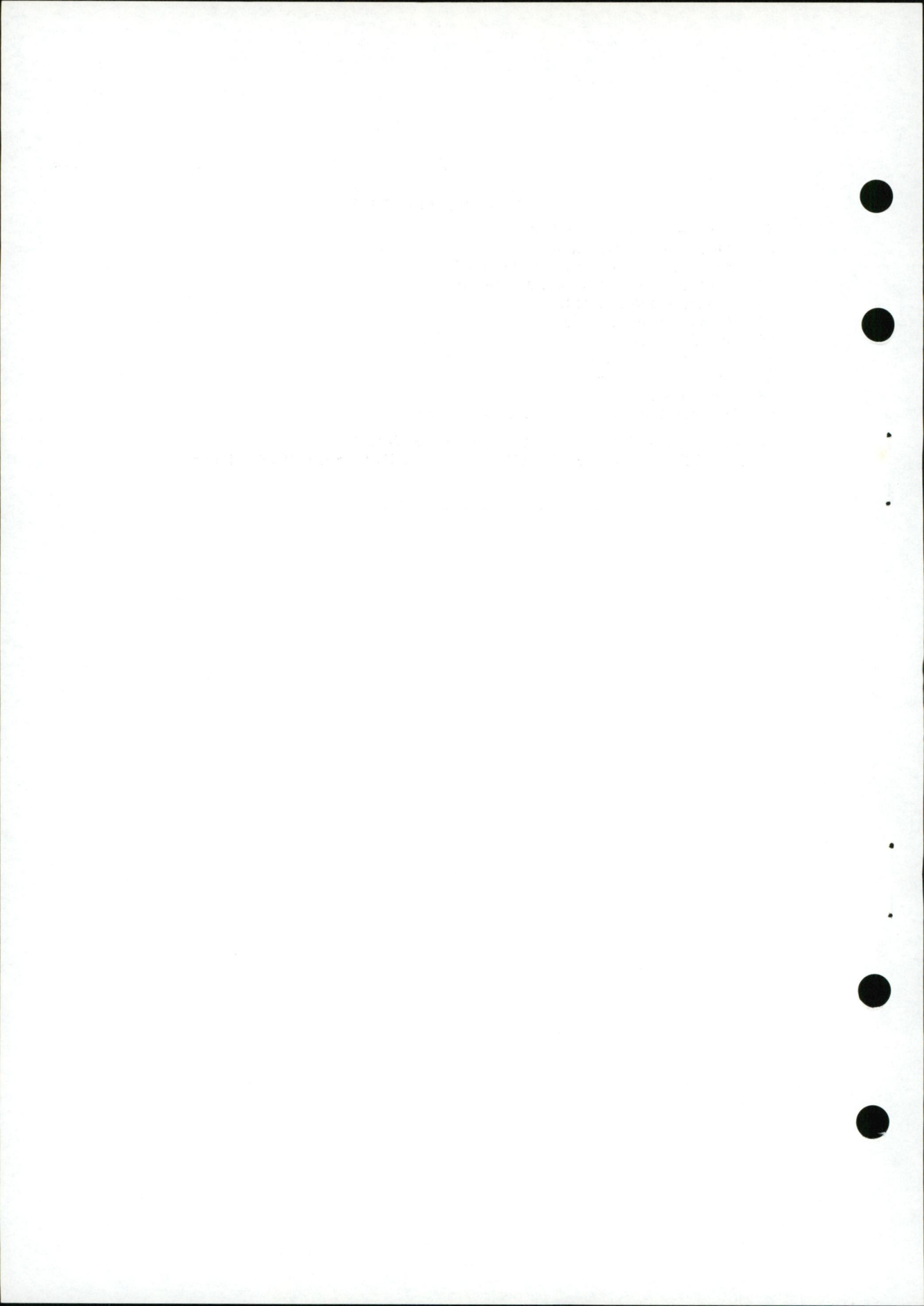
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RESIDENTIAL TENANCIES TRIBUNAL ACT 1986 No. 60

NEW SOUTH WALES



Act No. 60, 1986

An Act to constitute the Residential Tenancies Tribunal of New South Wales and provide for the exercise of its functions; to make provision with respect to excessive rent increases and rents; and for other purposes. [Assented to, 21 May 1986]

See also Landlord and Tenant (Amendment) Act 1986; Landlord and Tenant (Rental Bonds) Amendment Act 1986; Auctioneers and Agents (Amendment) Act 1986; Statutory and Other Offices Remuneration (Residential Tenancies Tribunal) Amendment Act 1986.

Residential Tenancies Tribunal 1986

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

PART 1
PRELIMINARY

Short title

1. This Act may be cited as the "Residential Tenancies Tribunal Act 1986".

Commencement

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day or days as may be appointed by the Governor and notified by proclamation published in the Gazette.

Act binds Crown

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

Interpretation

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

"Chairperson" means the Chairperson of the Tribunal;

"Commissioner for Consumer Affairs" means the Commissioner for Consumer Affairs appointed under section 13 of the Consumer Protection Act 1969 and any person appointed under that Act to act as Commissioner;

"Deputy Registrar" means a Deputy Registrar of the Tribunal;

"landlord" means the person who grants to another person the right to occupy residential premises under a residential tenancy agreement;

Residential Tenancies Tribunal 1986

“member” means the Chairperson or any other full-time member or part-time member of the Tribunal;

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

“Registrar” means the Registrar of the Tribunal;

“regulations” means regulations made under this Act;

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

“rental bond”, in relation to a residential tenancy agreement or proposed residential tenancy agreement, has the same meaning as it has in the Landlord and Tenant (Rental Bonds) Act 1977 in relation to a lease or proposed lease;

“residential premises” means any premises or part of premises (including any land occupied with the premises) that are, or are intended to be, used as a place of residence and includes a caravan or other movable dwelling;

“residential tenancy agreement” means any agreement, whether express or implied or oral or in writing, under which a person grants to another person for value the right to occupy residential premises, whether exclusively or otherwise, for the purpose of their use as a residence and includes such an agreement granting the right to occupy residential premises together with the letting of goods;

“tenancy” means the right to occupy residential premises under a residential tenancy agreement;

“tenant” means the person who has the right to occupy residential premises under a residential tenancy agreement;

“this Act” includes the regulations;

“Tribunal” means the Residential Tenancies Tribunal of New South Wales constituted by this Act.

(2) In this Act—

(a) a reference to a function includes a reference to a power, authority and duty; and

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

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(3) The Chairperson may be referred to as the Chairman or Chairwoman, as the case requires.

(4) For the purposes of this Act, a residential tenancy agreement is implied where the existence of a tenancy of residential premises is presumed by the operation of section 22A of the Landlord and Tenant Act 1899.

Application of Act

5. (1) This Act applies—

- (a) to residential tenancy agreements, whether made before or after the date of assent to this Act, notwithstanding the terms of any such residential tenancy agreement or any other contract, agreement or arrangement; and
- (b) to any action taken in relation to such a residential tenancy agreement or a tenant on or after 5 January 1986.

(2) This Act does not apply to a residential tenancy agreement—

- (a) where the tenant is a party to an agreement for the sale and purchase of the residential premises;
- (b) where the agreement arises under a mortgage in respect of the residential premises;
- (c) where the agreement arises under a company title scheme under which—
 - (i) a group of adjacent premises is owned by a corporation; and
 - (ii) those premises are let by the corporation to persons who jointly have a controlling interest in the corporation;
- (d) where the tenant is a boarder or a lodger; or
- (e) where the agreement is made in good faith for the purpose of giving a person a right to occupy residential premises for a period of not more than 2 months for the purpose of a holiday.

(3) This Act does not apply to—

- (a) any part of a hotel or motel;
- (b) any premises ordinarily used for holiday purposes;
- (c) any part of an educational institution, hospital or nursing home;
- (d) any part of a club;

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- (e) any premises used as a home for an aged or a disabled person within the meaning of the Aged or Disabled Persons Homes Act 1954 of the Commonwealth; or
- (f) controlled premises to which Parts II, III, IV and V of the Landlord and Tenant (Amendment) Act 1948 apply.

Exemptions from Act and other variations of application of Act

6. The regulations may provide that the provisions of this Act—
- (a) do not have effect in relation to a specified person or a specified class of persons;
 - (b) have effect in relation to a specified person or a specified class of persons to such extent as is specified;
 - (c) do not have effect in relation to a specified residential tenancy agreement or a specified class of residential tenancy agreements;
 - (d) have effect in relation to a specified residential tenancy agreement or class of residential tenancy agreements to such extent as is specified;
 - (e) do not have effect in relation to specified premises or a specified class of premises; or
 - (f) have effect in relation to specified premises or a specified class of premises to such extent as is specified.

PART 2

THE RESIDENTIAL TENANCIES TRIBUNAL OF NEW SOUTH WALES

DIVISION 1—*Constitution of the Tribunal*

Constitution of the Tribunal

7. (1) There is constituted by this Act a Residential Tenancies Tribunal of New South Wales which shall consist of—
- (a) a person who is, or is qualified for appointment as, a Magistrate and is appointed by the Governor as Chairperson of the Tribunal;

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- (b) such other full-time members who are barristers or solicitors, or who are eligible to be admitted as barristers or solicitors, of the Supreme Court as may be appointed by the Governor as full-time members of the Tribunal; and
- (c) such part-time members as may be appointed by the Governor as part-time members of the Tribunal.

(2) The Chairperson and other full-time members shall devote the whole of their time to the duties of their offices under this Act, except as permitted by this Act or with the consent of the Minister.

(3) The Tribunal shall have a seal of which all courts and persons acting judicially shall take judicial notice.

Age of members

8. (1) A person of or above the age of 65 years is not eligible to be appointed as a full-time member or to act in the office of a full-time member.

(2) A person of or above the age of 70 years is not eligible to be appointed as a part-time member or to act in the office of a part-time member.

Immunity of members and others

9. A member, in the exercise of the functions of a member, and the Registrar and any Deputy Registrar, in the exercise of jurisdiction or functions conferred or delegated under this or any other Act, have the same protection and immunity as a Justice has in the exercise of the functions of a Justice under the Justices Act 1902.

Terms of office of members

10. (1) Subject to this Part, a member shall hold office for such period, not exceeding 5 years, as may be specified in the instrument of appointment of the member but is eligible (if otherwise qualified) for re-appointment.

(2) A member shall, before first sitting as a member, take an oath or make an affirmation in the prescribed form that the member will faithfully and impartially discharge the duties of the office of a member.

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Effect of certain other Acts

11. (1) The Public Service Act 1979 does not apply to or in respect of the appointment of a member and a member is not, as a member, subject to that Act.

(2) Where by or under any other Act provision is made requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or prohibiting the person from engaging in employment outside the duties of that office, that provision does not operate to disqualify the person from holding that office and also the office of a part-time member or from accepting and retaining any remuneration payable to the person under this Act as a part-time member.

Remuneration of members

12. (1) The Chairperson and any other full-time members are entitled to be paid—

- (a) remuneration in accordance with the Statutory and Other Offices Remuneration Act 1975; and
- (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of them.

(2) A part-time member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the part-time member.

Casual vacancies in office of member

13. (1) A member shall be deemed to have vacated office if the member—

- (a) dies;
- (b) is unavailable for duty as a member for a period of 28 consecutive days except on leave granted, in the case of the Chairperson, by the Minister, or in the case of any other member, by the Chairperson, before, during or after that period;
- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;

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- (d) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, or a person under detention under Part VII of that Act, or becomes a protected person within the meaning of the Protected Estates Act 1983;
- (e) is convicted in New South Wales of an offence which is punishable by imprisonment for 12 months or upwards or is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be an offence so punishable;
- (f) resigns the office by instrument in writing addressed to the Minister;
- (g) being—
 - (i) a full-time member, attains the age of 65 years; or
 - (ii) a part-time member, attains the age of 70 years;
- (h) being the Chairperson or another full-time member, is retired from office by the Governor under subsection (2); or
- (i) is removed from office by the Governor under subsection (3).

(2) A full-time member may, after attaining the age of 60 years and before attaining the age of 65 years, be retired from office by the Governor and, if so retired, is entitled to such compensation (if any) as the Statutory and Other Offices Remuneration Tribunal determines.

(3) The Governor may remove a member from office for incapacity, incompetence or misbehaviour.

Filling of vacancy in office of member

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

Acting members and acting Chairperson

15. (1) The Governor may, from time to time, appoint a person to act in the office of a member during the illness or absence of the member, and the person, while so acting, shall have and may exercise all the functions of the member and shall be deemed to be a member.

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(2) The Governor may, from time to time, appoint another full-time member who is qualified to be appointed as Chairperson to act in the office of the Chairperson, and the full-time member, while so acting, shall have and may exercise all the functions of the Chairperson and shall be deemed to be the Chairperson.

(3) The Governor may remove any person from any office to which the person was appointed under this section.

(4) A person while acting in the office of a member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

(5) For the purposes of this section—

- (a) a vacancy in the office of a member or the Chairperson shall be deemed to be an absence from office of a member or the Chairperson, as the case may be; and
- (b) a full-time member shall be deemed to be absent from office as a member during any period when the member acts in the office of the Chairperson pursuant to an appointment under this section.

Superannuation and re-employment rights of full-time members

16. Schedule 1 has effect in relation to the rights of full-time members.

DIVISION 2—Registrar, Deputy Registrars and staff of the Tribunal

Registrar, Deputy Registrars and staff of the Tribunal

17. (1) A Registrar and Deputy Registrars of the Tribunal shall be employed under the Public Service Act 1979.

(2) The Registrar has, or Deputy Registrars have, such functions as are conferred or imposed on the Registrar or Deputy Registrars by or under this or any other Act or by the Tribunal in the exercise of its functions.

(3) During the absence of the Registrar, a Deputy Registrar nominated by the Chairperson has and may exercise the functions of the Registrar and in so acting shall be deemed to be the Registrar.

(4) The Tribunal may—

- (a) with the approval of the Minister; and
- (b) on such terms and conditions as may be approved by the Public Service Board,

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arrange for the use of the services of any staff or facilities of a government department, administrative office or public authority.

DIVISION 3—*Jurisdiction and functions of the Tribunal***Jurisdiction and functions of the Tribunal**

18. (1) The Tribunal has such jurisdiction as is, and such functions as are, conferred on it by or under this or any other Act.

(2) The Tribunal, wherever sitting, has jurisdiction throughout New South Wales.

(3) The Chairperson may, by instrument in writing, delegate to the Registrar or a Deputy Registrar, with such limitations and on such conditions, as the Chairperson thinks fit—

- (a) the exercise of such part of the jurisdiction of the Tribunal as is prescribed for the purposes of this section; and
- (b) the exercise of such other functions (other than the powers conferred by section 28 (8) and this power of delegation) as are conferred on the Chairperson,

and may, by instrument in writing, revoke (wholly or partly) the delegation.

(4) A delegation under this section of the exercise of jurisdiction or of a function does not prevent the exercise of the jurisdiction or function by the Chairperson.

(5) A jurisdiction or function purporting to have been exercised by a delegate under this section shall, until the contrary is proved, be deemed to have been duly exercised by a delegate under this section.

Orders of the Tribunal

19. (1) The Tribunal may, in any proceedings before it, make one or more of the following orders:

- (a) an order that requires a party to the proceedings to pay an amount of money to a person specified in the order within such time as may be specified in the order;
- (b) an order that an amount of money is not due or owing by a party to the proceedings to a person specified in the order;
- (c) an order that restrains any action in breach of a residential tenancy agreement by a party to the proceedings;

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- (d) an order that requires an action in performance of a residential tenancy agreement by a party to the proceedings;
 - (e) an order, having effect for a period not exceeding 12 months, that declares that an amount of rent payable under a residential tenancy agreement is excessive and declares a maximum rent;
 - (f) an order that recognises a person as a tenant under a residential tenancy agreement;
 - (g) an order that varies or sets aside any order made in the proceedings or in earlier proceedings;
 - (h) any other ancillary orders which the Tribunal thinks appropriate.
- (2) An order made under subsection (1) (c) or (d) may be made notwithstanding that it provides a remedy in the nature of an injunction or order for specific performance in circumstances in which such a remedy would not otherwise be available.
- (3) The Tribunal shall not make an order for the payment of an amount that exceeds \$5,000 or, where some other amount is prescribed for the purposes of this section, that other amount.

DIVISION 4—*Hearings***Making of applications to the Tribunal**

20. (1) An application under this or any other Act may be made to the Tribunal by lodging a written application containing the prescribed particulars, together with the prescribed fee, with the Registrar.

(2) The Registrar may waive payment of the prescribed fee where the Registrar is of the opinion, having regard to the means of the applicant and any other relevant matter, that it is appropriate to do so.

Notice of hearing and conduct of proceedings

21. (1) The Chairperson or the Registrar shall fix a time and place for the holding of proceedings before the Tribunal and shall notify each party to the proceedings in the prescribed manner of that time and place.

(2) The Tribunal shall give each party to proceedings before it a reasonable opportunity to call or give evidence, examine or cross-examine witnesses and make submissions to the Tribunal.

(3) If a party to proceedings before the Tribunal who has been notified under this section fails to attend at the time and place notified, the proceedings may be held in the absence of the party.

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Parties to proceedings and recognition of tenants

22. (1) Where a party to proceedings before the Tribunal has a right to proceed against 2 or more persons having a joint liability, it is sufficient if any one or more of those persons is or are served with process in the proceedings, and a decision in the proceedings may be given or entered up and enforced against the person or persons subject to the liability.

(2) Section 97 (Joint liability) of the Supreme Court Act 1970 applies to and in respect of a decision given or entered up in proceedings before the Tribunal in the same way as it applies to and in respect of a judgment given in proceedings before the Supreme Court.

(3) A legal personal representative may bring or defend proceedings before the Tribunal as if the representative were bringing or defending proceedings in the representative's own right.

(4) Where, at any time before or during proceedings before the Tribunal, the Tribunal is of the opinion that a person ought to be joined as a party to the proceedings, the Tribunal may, by notice in writing given to the person or by oral direction given during the proceedings, join the person as a party to the proceedings.

(5) Where, at any time before or during proceedings before the Tribunal, the Tribunal is of the opinion that a person who is not a party to the residential tenancy agreement should be recognised as a tenant, the Tribunal may make an order that recognises the person as a tenant and, if appropriate, join the person as a party to the proceedings.

(6) A person recognised as a tenant under this section shall be deemed, for the purposes of this or any other Act and of the relevant residential tenancy agreement, to be a tenant under that agreement.

Amendment of application

23. The Tribunal may, at any stage during the holding of proceedings before it, make such amendment of the application to which the proceedings relate as it thinks fit either at the request of the applicant or of its own motion with the approval of the applicant.

Adjournment of proceedings

24. (1) The Tribunal may from time to time adjourn proceedings before it to such times and places and for such purposes as it considers necessary or desirable.

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(2) The Registrar shall cause to be given to any party to proceedings that have adjourned who is not present or represented at the time when the proceedings are adjourned a notice of the time and place to which the proceedings are adjourned.

Proceedings before the Tribunal

25. (1) Proceedings before the Tribunal shall be held as in open court.

(2) Sittings of the Tribunal, and the constitution of the Tribunal at each sitting, shall be arranged and determined by the Chairperson.

(3) Proceedings before the Tribunal shall be heard and determined by one member sitting alone.

(4) In any proceedings before it, the Tribunal—

(a) is not bound by the rules of evidence and may inform itself on any matter in such manner as it thinks fit; and

(b) shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms.

(5) The Tribunal may, in proceedings before it, request a report from, or other assistance by, the Commissioner for Consumer Affairs.

Presentation of cases

26. (1) Each party to proceedings before the Tribunal shall have the carriage of the party's own case.

(2) A party to proceedings before the Tribunal or a person who applies to be made a party to the proceedings is not entitled to be represented by any other person unless the representation is approved by the Tribunal.

(3) The Tribunal shall not approve of another person representing a party in proceedings before it unless it appears to the Tribunal—

(a) that the representation should be permitted as a matter of necessity;

(b) that the party would otherwise be unfairly disadvantaged; or

(c) in the case of a landlord—that the landlord's agent should be permitted to represent the landlord in the course of carrying out his or her usual functions as the landlord's agent,

and the Tribunal is of the opinion that any other party will not be unfairly disadvantaged by the representation.

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(4) This section does not prevent an officer (within the meaning of the Companies (New South Wales) Code) of a corporation from representing that corporation.

(5) Contravention of any provision of this section does not invalidate any proceedings before the Tribunal in which the contravention occurs or any order made in those proceedings by the Tribunal.

Procedure of the Tribunal

27. If the manner or form of procedure for taking any step in proceedings before the Tribunal is not prescribed by this Act, the member before whom the proceedings are being or are to be held may direct what manner or form of procedure is to be followed, and any step taken in accordance with a direction so given is, for the purposes of the proceedings, regular and sufficient.

Summons and examination of witnesses

28. (1) The Registrar shall, at the direction of the Tribunal in proceedings before it or at the request of a party to any such proceedings, issue a summons requiring a person to attend the proceedings at a time and place specified in the summons as a witness to give evidence or produce any record in the person's custody or under the person's control that the person is required by the summons to produce.

(2) It is sufficient compliance with a summons issued only for the production of a record if the record is produced to the Registrar or a Deputy Registrar at such address as may be specified for that purpose in the summons at any time before the proceedings at which the record is required to be produced.

(3) Where a person is required by a summons to produce a record and the record is not in writing, or is not written in the English language, or is not decipherable on sight, the summons shall be deemed to require the person to produce, in addition to the record if it is in writing, or instead of the record if it is not in writing, a statement, written in the English language and decipherable on sight, containing the whole of the information in the record.

(4) The member before whom proceedings are being held may administer an oath to any person appearing as a witness before the Tribunal, whether or not the witness has been summoned, and allow the witness to be examined and cross-examined on oath.

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(5) A witness summoned to attend or appearing before the Tribunal has the same protection and, without affecting any penalty that may be imposed under this Act, is subject to the same liabilities as a witness would have or be subject to in proceedings before a Local Court.

(6) A witness summoned at the direction of the Tribunal is entitled to be paid such fees and allowances as are prescribed.

(7) A summons issued at the request of a party does not have effect unless, not later than a reasonable time before the day on which the attendance of the witness is required by the summons, tender is made of an amount in respect of the reasonable expenses of complying with the requirements of the summons.

(8) Where a person fails to attend the proceedings at a time and place specified in a summons under this section—

(a) the Chairperson has all the functions of a Justice under section 66 of the Justices Act 1902 to issue a warrant for the apprehension of the person and to further deal with that person; and

(b) section 66 of the Justices Act 1902 applies to the exercise of those functions as if a reference in that section—

(i) to a person who does not appear at a time and place appointed by a summons and who is a witness—were a reference to the person;

(ii) to a Justice—were a reference to the Chairperson; and

(iii) to costs and expenses—were a reference to such fees and allowances as are prescribed or the reasonable expenses of complying with the requirements of the summons, as the case requires.

(9) Sections 64 and 65 of the Justices Act 1902 apply to a warrant issued by the Chairperson in the same way as they apply to a warrant issued under section 66 of that Act.

Evidence before the Tribunal

29. In proceedings before the Tribunal, the Tribunal may, in its discretion—

(a) receive in evidence the transcript of evidence in any proceedings before a court or tribunal, whether constituted in the State or elsewhere, and draw any conclusions of fact from that transcript that it considers proper;

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- (b) adopt any finding, decision or judgment of a court or tribunal that may be relevant to the proceedings; and
- (c) receive in evidence any report of the Commissioner for Consumer Affairs that may be relevant to the proceedings but only if a copy of that report has been made available for inspection by every party present at the proceedings.

Inspection and retention of records

30. (1) The Tribunal may inspect any record or statement produced before it and may retain it for such period as it thinks necessary for the purposes of the proceedings in relation to which it was produced and may make copies of the record or statement or any part of the record or statement.

(2) Where a record or statement is produced before, and retained by, the Tribunal, the person otherwise entitled to possession of the record or statement is, on request, entitled to be supplied, as soon as practicable, with a copy certified by the Registrar or a Deputy Registrar to be a true copy and a record or statement so certified is admissible as evidence in all courts as if it were the original record or statement.

Referral of questions of procedure and law to Supreme Court by Tribunal

31. (1) A reference under this section shall be made in accordance with rules of the Supreme Court.

(2) Any question with respect to procedure that arises in proceedings before the Tribunal shall be decided by the Tribunal in the proceedings.

(3) Where, in proceedings before the Tribunal, a question arises with respect to a matter of law, the Tribunal may decide the question or may refer it to the Supreme Court for decision.

(4) Where a question with respect to a matter of law is referred to the Supreme Court by the Tribunal—

- (a) the Tribunal shall not make an order or decision to which the question is relevant until the Supreme Court has decided the question;
- (b) on deciding the question, the Supreme Court shall remit its decision to the Tribunal; and
- (c) the Tribunal shall not proceed in a manner, or make an order or decision, that is inconsistent with the decision of the Supreme Court.

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(5) For the purposes of this section, a reference to a matter of law includes a reference to a matter relating to the jurisdiction of the Tribunal.

Appeal against decision of Tribunal with respect to matter of law

32. (1) An appeal under this section shall be made in accordance with rules of the Supreme Court.

(2) Where, in proceedings before the Tribunal, the Tribunal decides a question with respect to a matter of law, a party to the proceedings who is dissatisfied with the decision may appeal to the Supreme Court against the decision.

(3) After deciding the question the subject of an appeal by a party under this section, the Supreme Court may, unless it affirms the decision of the Tribunal on the question—

(a) make such order in relation to the proceedings in which the question arose as, in its opinion, should have been made by the Tribunal; or

(b) remit its decision on the question to the Tribunal and order a re-hearing of the proceedings before the Tribunal.

(4) Where a re-hearing is held, the Tribunal shall not proceed in a manner, or make an order or decision, that is inconsistent with the decision of the Supreme Court remitted to the Tribunal.

(5) Where a party to proceedings before the Tribunal has appealed to the Supreme Court against a decision of the Tribunal on a question with respect to a matter of law, either the Tribunal or the Supreme Court may suspend, until the appeal is determined, the operation of any order or decision made in the proceedings.

(6) Where the Tribunal suspends the operation of an order or decision, the Tribunal or the Supreme Court may terminate the suspension or, where the Supreme Court has suspended the operation of an order or decision, the Supreme Court may terminate the suspension.

(7) For the purposes of this section, a reference to a matter of law includes a reference to a matter relating to the jurisdiction of the Tribunal.

Dismissal of frivolous, etc., proceedings

33. (1) Where, at any stage of proceedings before the Tribunal, the Tribunal is satisfied that the proceedings are frivolous, vexatious, misconceived or lacking in substance, or that for any other reason the proceedings should not be entertained, it may dismiss the proceedings.

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(2) Where the Tribunal dismisses proceedings under this section, it may order the person who brought the proceedings to pay the costs of the proceedings.

Tribunal to attempt to conciliate

34. (1) The Tribunal shall not make an order in respect of an application made to it until it has brought, or used its best endeavours to bring, the parties to a settlement acceptable to all of them.

(2) Where such a settlement is made, the Tribunal shall make an order that, to the extent authorised by that settlement, gives effect to the terms of the settlement.

Applications for variation or setting aside of orders

35. A person who is or was a party to any proceedings before the Tribunal may apply for an order varying or setting aside an order made in those proceedings and in force at the time of the application.

No appeal from order of Tribunal

36. Except as provided by sections 32 (Appeal against decision of Tribunal with respect to matter of law) and 35 (Applications for variation or setting aside of orders), an order of the Tribunal shall be final and binding on all parties to the proceedings in which the order is made and no appeal shall lie in respect of such an order.

Orders for payment of money

37. (1) Where an order of the Tribunal is for payment of an amount of money (including any amount awarded as costs) the order shall, on the filing of the prescribed documents in the office or registry of a court having jurisdiction to order the payment of such an amount of money, be deemed to be a judgment of that court for the payment of that amount of money in accordance with the order of the Tribunal.

(2) For the purposes of subsection (1), the prescribed documents are—

- (a) a copy of the order of the Tribunal certified by the Registrar or a Deputy Registrar to be a true copy; and
- (b) an affidavit by the person to whom the amount of money was ordered to be paid specifying the amount unpaid under the order and, where the order is to take effect on any default, as to the default.

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(3) Notwithstanding anything in any other Act, no fee is payable for the filing of documents under this section.

No costs allowable

38. Except as provided by section 33 (Dismissal of frivolous, etc., proceedings), costs shall not be allowed to or against any party to proceedings before the Tribunal.

Reasons for decision of Tribunal

39. (1) The Tribunal shall, at the conclusion of proceedings before it, state in writing its reason for any order or decision made in the proceedings.

(2) The Registrar shall, within 14 days of the receipt of a request by a party to concluded proceedings, give to the party a copy of the Tribunal's reasons for any decision or order made in those proceedings.

Contempt of Tribunal

40. (1) A person shall not wilfully contravene or fail to comply with an order (not being an order for the payment of an amount of money) or decision of the Tribunal.

Penalty: 50 penalty units or 12 months' imprisonment, or both.

(2) The Tribunal, when constituted by the Chairperson, has the same functions in relation to a contempt committed in the face of the Tribunal as it would have if the Tribunal were a Local Court constituted by a Magistrate sitting alone.

(3) The Supreme Court has the same functions in relation to a contempt of the Tribunal (whether or not it is constituted by the Chairperson) as it has in relation to a contempt of a Local Court constituted by a Magistrate sitting alone.

(4) Where the Tribunal is constituted by a member other than the Chairperson, a person shall not—

- (a) wilfully insult the Tribunal;
- (b) wilfully misbehave during proceedings before the Tribunal;
- (c) wilfully and without lawful excuse interrupt proceedings before the Tribunal; or
- (d) without lawful excuse disobey a direction of the Tribunal during proceedings before the Tribunal.

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Penalty: 5 penalty units or 6 months' imprisonment, or both.

(5) Where the Tribunal is constituted by a member other than the Chairperson, the Tribunal may, in proceedings before it, direct a person who does anything referred to in subsection (4) to leave and a person to whom such a direction is given shall comply with the direction.

Penalty—subsection (5): 5 penalty units.

Reference of certain matters concerning landlords' agents

41. The Tribunal may, where it considers it appropriate, bring the conduct of a landlord's agent in a particular matter to the attention of the registrar of the Council of Auctioneers and Agents under the Auctioneers and Agents Act 1941 or the Commissioner for Consumer Affairs, or both.

PART 3**COMMISSIONER FOR CONSUMER AFFAIRS****Functions of Commissioner for Consumer Affairs conferred by this Act**

42. The Commissioner for Consumer Affairs has, in addition to any other functions conferred or imposed on the Commissioner, the following functions:

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

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- (ii) distribute information about residential tenancy agreements; or
- (iii) carry out research into matters relating to or affecting the relationship between landlords and tenants.

Commissioner for Consumer Affairs may represent tenant

43. In any proceedings before the Tribunal, a tenant may, notwithstanding anything in section 26 (Presentation of cases), be represented by the Commissioner for Consumer Affairs or by a barrister, solicitor or agent for the Commissioner.

Commissioner for Consumer Affairs may act on behalf of tenants

44. (1) Where a tenant, not being a body corporate, has made a complaint to the Commissioner for Consumer Affairs and the Commissioner, after investigating the complaint, is satisfied that—

- (a) the tenant may have a right to take or defend proceedings before the Tribunal and the Commissioner is of the opinion that it is in the public interest that the Commissioner should take or defend those proceedings on behalf of the tenant; or
- (b) the Minister directs that the Commissioner take or defend proceedings before the Tribunal,

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

(2) A consent by a tenant to the taking or defending by the Commissioner of proceedings before the Tribunal on behalf of the tenant is irrevocable unless the Commissioner consents to revocation of the consent.

Conduct of proceedings taken by Commissioner for Consumer Affairs

45. Where the Commissioner for Consumer Affairs takes or defends proceedings before the Tribunal on behalf of a tenant—

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

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- (c) the tenant is liable to pay any other amount that the Tribunal orders the tenant to pay.

Intervention by Commissioner for Consumer Affairs

46. (1) Without limiting section 44, the Commissioner for Consumer Affairs may, if the Commissioner is of the opinion that it would be in the public interest to do so, or, at the direction of the Minister shall, intervene, and has a right to be heard personally or by barrister, solicitor or agent, in any proceedings arising under any Act before the Tribunal.

(2) The Commissioner, on intervening under this section in any proceedings, becomes a party to the proceedings and has all the rights of such a party.

Delegation by Commissioner for Consumer Affairs

47. (1) The Commissioner for Consumer Affairs may delegate to a person the exercise of any of the Commissioner's functions under this Act, other than this power of delegation.

(2) A delegation under this section—

- (a) shall be in writing;
- (b) may be general or limited; and
- (c) may be revoked (wholly or partly) by the Commissioner.

(3) A delegate is, in the exercise of a function delegated under this section, subject to such conditions as are specified in the instrument of delegation.

(4) A function delegated under this section, when exercised by the delegate, shall be deemed to have been exercised by the Commissioner.

(5) A delegation under this section does not prevent the exercise of a function by the Commissioner.

(6) A function purporting to have been exercised by a delegate under this section shall, until the contrary is proved, be deemed to have been duly exercised by a delegate under this section.

Office and identification of investigating officer

48. (1) The Commissioner for Consumer Affairs may designate an officer as an investigating officer for the purposes of this Act.

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(2) The Minister may provide an investigating officer with a certificate of identification as an investigating officer.

(3) An investigating officer shall not—

(a) exercise the powers conferred by section 49; or

(b) receive information or evidence given, or a document produced, in compliance with a notice under section 49,

unless he or she is the holder of a certificate of identification.

(4) An investigating officer who exercises in any place a function conferred by section 49 shall, if requested by a person apparently in charge in that place, or apparently in charge of any work being carried on in that place, produce his or her certificate of identification.

(5) An investigating officer shall, on being requested to do so by a person who proposes to give to the investigating officer information or evidence, or to produce a document, in compliance with a notice under section 49, produce his or her certificate of identification.

(6) No liability is incurred by an investigating officer for any act done or omitted by the officer in good faith in the course of the administration of this Act.

Power of investigating officer to obtain information, documents and evidence

49. (1) Where an investigating officer believes on reasonable grounds that a person is capable of giving information, producing documents or giving evidence in relation to a matter that constitutes, or may constitute, a contravention of this Act, the investigating officer may, by notice in writing given to the person, require the person—

(a) to provide an investigating officer, by writing signed by the person (or, in the case of a body corporate, by a competent officer of the body corporate) and given to the investigating officer within the time and in the manner specified in the notice, with any such information;

(b) to produce to an investigating officer, in accordance with the notice, any such documents; or

(c) to appear before an investigating officer at a time and place specified in the notice and give any such evidence, either orally or in writing, and produce any such documents.

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(2) Where an investigating officer believes on reasonable grounds that a person has engaged, or is engaging, in conduct that constitutes, or may constitute, a contravention of this Act, the investigating officer may, for the purpose of ascertaining by the examination of documents in the possession or control of the person whether the person has engaged, or is engaging, in that conduct, enter any premises and inspect any documents in the possession or under the control of the person and make copies of, or take extracts from, those documents.

(3) A person shall not—

- (a) refuse or fail to comply with a notice under this section to the extent that the person is capable of complying with it; or
- (b) in purported compliance with such a notice, knowingly provide information, or give evidence, that is false or misleading.

Penalty: 5 penalty units.

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

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

Inspection of documents by Commissioner for Consumer Affairs and others

50. (1) The Commissioner for Consumer Affairs, a person authorised by the Commissioner or an investigating officer may inspect a document produced in accordance with a notice under section 49 and may make copies of, or take extracts from, the document.

(2) For the purposes of this Act, the Commissioner or an investigating officer may—

- (a) take possession; and
- (b) retain possession for as long as is necessary for those purposes,

of a document produced in accordance with a notice under section 49.

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

(4) Until a certified copy of a document is provided under this section, the person having custody of the document shall, at such times and places as the person thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by the person so entitled, to inspect the document and make copies of, or take extracts from, the document.

PART 4

RENTS

DIVISION 1—*Rent increases and excessive rents*

Variation of rent

51. (1) The rent payable by a tenant under a residential tenancy agreement shall not be increased except by notice in writing given to the tenant specifying the amount of the increased rent and the day from which the increased rent is payable.

(2) A day specified as the day from which increased rent is payable shall not be less than 60 days after the day on which notice of the increase was given under this section.

(3) A notice of increase of rent given in accordance with this section (and not withdrawn by the landlord or the landlord's agent or affected by any order of the Tribunal) varies the residential tenancy agreement so that the increased rent specified in the notice is payable under the agreement from the day specified in the notice.

(4) The rent payable by a tenant under a residential tenancy agreement that creates a tenancy for a fixed term shall not be increased during the currency of the term—

- (a) unless the agreement provides that the rent may be increased during the term; and
- (b) unless the rent is increased in accordance with this section.

(5) Subsection (2) does not apply to or in respect of a residential tenancy agreement where the landlord is the New South Wales Land and Housing Corporation.

Penalty: 5 penalty units.

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Tenant may apply to Tribunal for an order that a rent increase or rent is excessive

52. (1) A tenant may apply to the Tribunal for an order declaring that a rent increase is excessive not later than 30 days—

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

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

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

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

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(4) Where the Tribunal determines under this section that a rent increase or rent is excessive, the Tribunal may make an order declaring that the rent increase or rent is excessive and may—

- (a) in the case of a rent increase—order that from a day specified by the Tribunal, not being earlier than the day from which the increased rent was payable, the rent shall not exceed an amount specified by the Tribunal; or
- (b) in the case of rent—order that from a day specified by the Tribunal, not being earlier than the date of the tenant's application to the Tribunal, the rent shall not exceed an amount specified by the Tribunal,

and may make such other orders as it thinks fit.

(5) An order made under this section by the Tribunal specifying a maximum amount of rent—

- (a) has effect for such period, not exceeding 12 months, as is specified by the Tribunal in the order; and
- (b) binds only the parties to the residential tenancy agreement or the proposed residential tenancy agreement under which the rent is payable.

(6) A person shall not demand, require or receive any rent from a tenant of an amount exceeding an amount specified by the Tribunal under this section in relation to the tenant's occupation of the residential premises.

Penalty: 5 penalty units.

(7) A court before which proceedings for an offence under subsection (6) have been brought or the Tribunal, on application by a tenant, may order that a person who has committed an offence under subsection (6) pay to the tenant an amount equal to the amount of any rent unlawfully received from the tenant.

(8) Where the residential premises occupied by a tenant are held under a residential tenancy agreement and goods or fittings in, or connected with the tenant's occupation of, the premises are let to the tenant by a separate agreement or agreements, the Tribunal may, in making any order under this section, declare the separate agreements to be part of the residential tenancy agreement and may make orders under this section in respect of those agreements as if any amounts payable under them were payable under the residential tenancy agreement.

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Interim orders suspending rent increases

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

DIVISION 2—Offences**Consideration for residential tenancy agreement to be rent and rental bond only**

54. A person shall not require or receive from a tenant or prospective tenant any monetary consideration for or in relation to entering into, renewing, extending or continuing a residential tenancy agreement other than rent and a rental bond and such fees as may be prescribed.

Penalty: 20 penalty units.

Payment of rent by post-dated cheque, etc., prohibited

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

Penalty: 5 penalty units.

Rent receipts to be issued

56. (1) Any person who receives payment of rent under a residential tenancy agreement shall, if rent is paid in person, forthwith give or cause to be given to the person making the payment a receipt for the payment.

(2) Where rent is not paid in person, the landlord or the landlord's agent shall, on receipt of the rent, prepare or cause to be prepared a receipt for the rent and make the receipt available for collection by the tenant.

(3) A receipt for rent given or prepared under this section shall contain the following particulars:

- (a) the name of the person who receives the rent or on whose behalf the rent is received;
- (b) the name of the person paying the rent or on whose behalf the rent is paid;
- (c) the address of the residential premises for which the rent is paid;

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- (d) the period for which the rent is paid;
- (e) the date on which the rent is received;
- (f) the amount of rent paid.

(4) A person who contravenes or fails to comply with this section is guilty of an offence and liable to a penalty of 5 penalty units.

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

Records of rent to be kept

57. (1) A landlord or the landlord's agent under a residential tenancy agreement shall keep, or cause to be kept, a record showing rent received under the agreement.

(2) A record showing rent received and copies of all rent receipts issued by or on behalf of a landlord under a residential tenancy agreement shall be kept by the landlord or the landlord's agent under the agreement for a period of not less than 12 months succeeding the termination of the tenancy.

Penalty: 5 penalty units.

False or misleading statements

58. A person shall not knowingly make to a tenant or a prospective tenant a false or misleading statement or representation, whether oral or written, concerning the rights and remedies of the tenant or prospective tenant under this Act.

Penalty: 50 penalty units.

PART 5**MISCELLANEOUS****Contracting out prohibited**

59. The provisions of this Act have effect notwithstanding any stipulation to the contrary and no residential tenancy agreement, contract or other agreement or arrangement, whether oral or in writing and made or entered into before or after the commencement of this section, operates to annul, vary or exclude any of the provisions of this Act.

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Disclosure of information

60. A person shall not disclose any information obtained in connection with the administration or execution of this Act (or any other Act conferring or imposing functions on the Tribunal) unless that disclosure is made—

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

Penalty: 5 penalty units.

Shortened references to the Tribunal

61. In any other Act, in any instrument made under any Act or in any other instrument of any kind, except in so far as the context or subject-matter otherwise indicates or requires, a reference to the Residential Tenancies Tribunal shall be read as a reference to the Residential Tenancies Tribunal of New South Wales constituted by this Act.

Authentication of certain documents

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

Evidence and proceedings

63. (1) In any legal proceedings, proof is not required (until evidence is given to the contrary) of—

- (a) the constitution of the Tribunal; or
- (b) the appointment of, or the holding of office by, any member.

(2) Proceedings for an offence against this Act shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Costs of administration

64. The costs of administration of this Act in any year shall not, so far as is practicable, exceed the amount of contributions paid for that purpose from the Auctioneers and Agents Statutory Interest Account under the Auctioneers and Agents Act 1941 and the Rental Bond Interest Account under the Landlord and Tenant (Rental Bonds) Act 1977.

Penalty units

65. A reference in this Act to a number (whether fractional or whole) of penalty units shall be deemed to be a reference to an amount of money equal to the amount obtained by multiplying \$100 by that number of penalty units.

Offences by corporations

66. (1) Where a corporation contravenes, whether by act or omission, any provision of this Act, each person who is a director of the corporation or who is concerned in the management of the corporation shall be deemed to have contravened the same provision unless the person satisfies the court that—

- (a) the corporation contravened the provision without the knowledge of the person;
- (b) the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision; or
- (c) the person, being in such a position, used all due diligence to prevent the contravention by the corporation.

(2) A person may be proceeded against and convicted under a provision pursuant to this section whether or not the corporation has been proceeded against or been convicted under that provision.

(3) Nothing in this section affects the liability imposed on a corporation for an offence committed by the corporation against this Act.

(4) This section does not apply to or in respect of a person who is a director of, or who is concerned in the management of, a corporation which is constituted by or under an Act.

Service of documents

67. (1) A notice or other document required to be given to a tenant under this Act may be served—

- (a) by delivering it personally to the tenant or a person apparently of or above the age of 16 years by whom the rent payable by the tenant is ordinarily paid;
- (b) by delivering it to the residential premises occupied by the tenant and by leaving it there with some person apparently of or above the age of 16 years for the tenant;
- (c) by sending it by post to the residential premises occupied by the tenant; or
- (d) in such other manner as may be prescribed for the purposes of this section or approved by the Tribunal.

(2) A notice or other document required to be given to a landlord under this Act may be served—

- (a) by delivering it personally to the landlord, the landlord's agent or a person apparently of or above the age of 16 years to whom the rent payable to the landlord is ordinarily paid;
- (b) by sending it by post; or
- (c) in such other manner as may be prescribed for the purposes of this section or approved by the Tribunal.

(3) A document or application given or made to the Tribunal may be served on the Tribunal or lodged with the Registrar by leaving it at, or by sending it by post to—

- (a) the office of the Tribunal; or
- (b) if it has more than one office—any one of its offices.

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

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Regulations

68. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to—

- (a) the procedure and practice to be followed in proceedings before the Tribunal (including the practice and procedure to be followed in the office of the Registrar) and any incidental or related matters;
- (b) regulating, or empowering the Registrar to regulate, the business of the Tribunal and empowering the Chairperson or the Registrar to give directions as to the steps to be taken to make any proceedings before the Tribunal ready for hearing;
- (c) the duties of, and the records to be kept by, the Registrar in relation to, or for the purposes of, any proceedings before the Tribunal;
- (d) the service of notices under this Act on persons other than landlords and tenants; and
- (e) fees to be paid under this Act.

(2) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

(3) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind;
or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

Savings, transitional and other provisions

69. Schedule 2 has effect.

Residential Tenancies Tribunal 1986

SCHEDULE 1

(Sec. 16)

RIGHTS OF FULL-TIME MEMBERS

Preservation of rights of full-time member previously public servant, etc.

1. (1) Subject to subclause (2) and to the terms of appointment, where a full-time member was, immediately before being appointed as a full-time member—

- (a) an officer of the Public Service or a Teaching Service;
- (b) a contributor to a superannuation scheme;
- (c) an officer employed by a statutory body; or
- (d) a person in respect of whom provision was made by any Act for the retention of any rights accrued or accruing to the person as an officer or employee,

he or she—

- (e) shall retain any rights accrued or accruing to him or her as such an officer, contributor or person;
- (f) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before being appointed as a full-time member; and
- (g) shall be entitled to receive any deferred or extended leave and any payment, pension or gratuity,

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

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

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

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

*Residential Tenancies Tribunal 1986*SCHEDULE 1—*continued*RIGHTS OF FULL-TIME MEMBERS—*continued*

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

(5) In this clause—

“statutory body” means any body declared under clause 3 to be a statutory body for the purposes of this Schedule;

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

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

2. (1) A person who—

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

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

(i) an officer of the Public Service or a Teaching Service; or

(ii) an officer or employee of a statutory body; and

(c) has not attained the age at which the person would have been entitled to retire had the person continued to be such an officer or employee,

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

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

(a) was, immediately before being appointed to a full-time office constituted by an Act, an officer or employee referred to in subclause (1) (b); and

(b) is after that appointment appointed as a full-time member,

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

(3) In this clause—

“statutory body” means any body declared under clause 3 to be a statutory body for the purposes of this Schedule.

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SCHEDULE 1—*continued*RIGHTS OF FULL-TIME MEMBERS—*continued***Declaration of statutory bodies**

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

SCHEDULE 2

(Sec. 69)

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

Liability for certain offences

1. A person is not liable for a contravention of, or failure to comply with, section 51 or sections 54–57 (1) where the offence occurred on or after 5 January 1986 and before the commencement of those provisions.

Extension of time for certain applications to the Tribunal

2. A tenant may apply to the Tribunal, not later than 30 days after the commencement of section 52, for an order under that section and the Tribunal may make such an order declaring that a rent increase is excessive, where notice of the rent increase was given on or after 5 January 1986 and before the commencement of that section.

Savings and transitional regulations

3. (1) The regulations may contain other provisions of a savings or transitional nature consequent on the enactment of this Act and the Landlord and Tenant (Amendment) Act 1986.

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect as from the date of assent to this Act or a later day.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication in the Gazette; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication in the Gazette.

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SCHEDULE 2—*continued*

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

(4) A provision referred to in subclause (1) shall, if the regulations so provide, have effect notwithstanding any other clause of this Schedule.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1986

