

FIRST PRINT

BOARDING HOUSES AND LODGING HOUSES BILL 1991

NEW SOUTH WALES



EXPLANATORY NOTE

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

Section 6 (1) (d) of the Residential Tenancies Act 1987 excludes from the operation of that Act a residential tenancy agreement under which the tenant is a "boarder or lodger". The object of this Bill is to make provision for the rights and obligations of the owners of boarding houses and lodging houses and the boarders and lodgers.

The distinction between a boarder and a lodger is that a boarder is a lodger who is provided with meals by the owner of the boarding house.

The proposed Act provides for standard forms of "boarding agreements" and "lodging agreements" to be entered into by the owners of boarding houses and lodging houses and the boarders and lodgers.

The letters "RTA" in the clause headings in this Bill are an abbreviation of "Residential Tenancies Act 1987" and indicate a similarity between the clause and the quoted section of that Act.

PART 1—PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the proposed Act to commence on a day or days to be appointed by proclamation.

Clause 3 defines words and expressions to be used in the proposed Act.

Clause 4 provides for the proposed Act to be binding on the Crown.

Clause 5 applies the proposed Act not only to boarding agreements and lodging agreements made after the commencement of the clause but also, with some exceptions, to those made before that commencement, whether the agreements are written or oral, or partly written and partly oral.

Clause 6 excludes certain premises, such as hotels and motels, from the operation of the proposed Act.

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Clause 7 excludes certain agreements, such as those that relate to a home unit under a company title scheme, from the operation of the proposed Act.

PART 2—AGREEMENTS

Division 1—General

Clause 8 provides for standard forms of boarding agreements and lodging agreements.

Clause 9 provides that a boarding agreement or lodging agreement is to be taken to have been entered into in writing in the standard form even if it is not in writing or in that form. It also renders void a term of a boarding agreement or lodging agreement to the extent that it is not in the standard form, but does not avoid additional terms that are not inconsistent with the standard form.

Clause 10 authorises the inclusion in a boarding agreement or lodging agreement of terms that are not inconsistent with the standard form for the agreement.

Clause 11 renders void a provision of a boarding agreement or lodging agreement that is inconsistent with the proposed Act.

Clause 12 renders void a provision of a boarding agreement or lodging agreement to the extent that it provides for a rental bond in excess of 1 week's rent and makes it an offence to accept more than this.

Clause 13 makes it an offence to receive a payment from a boarder or lodger for entering into, extending or renewing a boarding agreement or lodging agreement unless the payment is made as rent, as a rental bond or as a prescribed payment.

Clause 14 provides for the Residential Tenancies Tribunal to make certain orders in the event of a breach of a boarding agreement or lodging agreement. It also enables the Tribunal to make similar orders on the hearing of a dispute that arises under such an agreement and is referred to the Tribunal by the Tenancy Commissioner after an unsuccessful attempt by the Commissioner to settle the dispute.

Division 2—Rents

Clause 15 penalises the owner of a boarding house or lodging house who enters into a boarding agreement or lodging agreement requiring the boarder or lodger to pay more than 1 week's rent in advance. However, it does not preclude a boarder or lodger from volunteering more than 1 week's rent in advance.

Clause 16 penalises a failure to give a receipt for rent paid under a boarding agreement or lodging agreement unless the rent is, by arrangement between the parties, paid to the credit of an account such as an account with a bank or building society.

Clause 17 requires the owner of a boarding house or a lodging house, and an agent for such an owner, to keep for 12 months records of rent received and a copy of rent receipts issued.

Clause 18 provides for the procedure to be followed if the rent under a boarding agreement or lodging agreement is to be increased.

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Division 3—Termination of agreements

Clause 19 sets out the only circumstances in which a boarding agreement or lodging agreement terminates.

Clause 20 sets out the periods of notice required to be given in terminating a boarding agreement or lodging agreement in various circumstances.

Clause 21 enables a boarding agreement or lodging agreement to be terminated if the room the subject of the agreement becomes uninhabitable or is acquired by compulsory process, or if the boarder or lodger intentionally or recklessly causes damage to the boarding house or lodging house.

Clause 22 provides for rent under a boarding agreement or a lodging agreement to accrue from day to day.

Clause 23 prevents implied waiver of a boarding agreement or lodging agreement, or of its termination, by demand for or acceptance of rent, or by the taking of proceedings for its recovery.

Clause 24 penalises the owner of a boarding house or lodging house who enters a room the subject of a boarding agreement or lodging agreement in order to take possession of the room before the agreement terminates.

Clause 25 excludes from the Supreme Court, the District Court and a Local Court any jurisdiction in proceedings by an owner for recovery of possession of a room in a boarding house or lodging house.

Clause 26 requires the owner of a boarding house or lodging house to mitigate any loss following abandonment of the premises by a boarder or lodger.

Clause 27 deals with the treatment of goods left in a boarding house or lodging house by a former boarder or lodger.

PART 3—ADMINISTRATION

Clause 28 sets out functions of the Tenancy Commissioner in relation to matters such as research and reports, investigation and resolution of complaints and the distribution of information.

Clause 29 enables the Tenancy Commissioner to delegate his or her functions.

Clause 30 enables the Minister to appoint an investigator holding office under the Residential Tenancies Act 1987 as an investigator for the purposes of the proposed Act. An investigator would have functions similar to those conferred on an investigator under the Residential Tenancies Act 1987. These include a power of entry and a power to require the production of documents.

Clause 31 confers on the Tenancy Commissioner and others certain powers in relation to documents produced as referred to in relation to clause 30. These include the making of copies and the retention of possession.

Clause 32 sets out the procedure to be followed by an investigator proposing to exercise the power of entry on premises conferred by clause 30.

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Clause 33 excludes any personal liability on the part of the Tenancy Commissioner and others exercising in good faith a function conferred or imposed by the proposed Act.

Clause 34 provides for the representation before the Residential Tenancies Tribunal of a boarder or lodger.

Clause 35 enables the Tenancy Commissioner to take legal proceedings in the public interest on behalf of a boarder or lodger.

Clause 36 confers on the Tenancy Commissioner the powers that are necessary for the conduct of legal proceedings on behalf of a boarder or lodger and provides for the costs (but not other amounts) payable by the boarder or lodger in the proceedings to be met by the Commissioner.

PART 4—MISCELLANEOUS

Clause 37 enables the Tribunal to extend the time within which anything is required to be done under the proposed Act.

Clause 38 makes it an offence to evade operation of the proposed Act and overrides any stipulation in an agreement that is contrary to the provisions of the proposed Act.

Clause 39 enables a court to award costs against the plaintiff in proceedings before the court that could have been taken before the Tribunal under the proposed Act.

Clause 40 makes it an offence to disclose, except in certain circumstances, any information obtained in the course of administering or executing the proposed Act.

Clause 41 enables proceedings for an offence under the proposed Act to be brought within 3 years after commission of the offence or later if the Attorney General consents.

Clause 42 prevents the proposed Act from affecting the operation of the Contracts Review Act 1980.

Clause 43 imposes on a director of a corporation, in certain circumstances, the same liability for an offence by the corporation as is imposed on the corporation.

Clause 44 penalises aiding and abetting, and like actions, in relation to offences under the proposed Act.

Clause 45 provides for the manner in which a document may be served for the purposes of the proposed Act.

Clause 46 enables a boarder or lodger who is intellectually impaired or suffers other disabilities to appoint an agent to receive notices or other documents sent under the proposed Act.

Clause 47 preserves the jurisdiction conferred on the Residential Tenancies Tribunal in relation to an Act other than the Residential Tenancies Act 1987.

Clause 48 provides for the making of regulations.

Clause 49 gives effect to the Schedule of savings and transitional provisions.

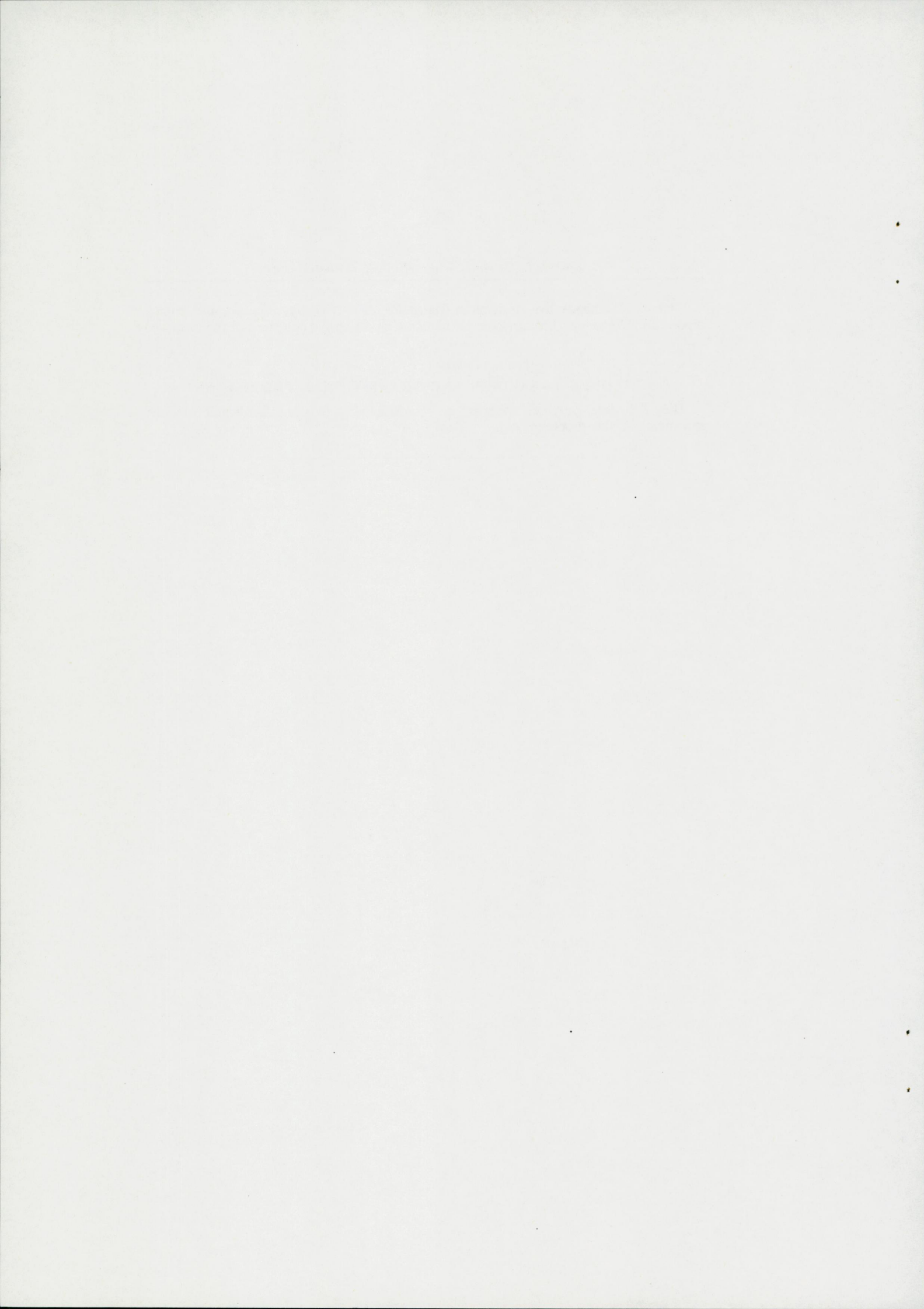
Clause 50 amends the Landlord and Tenant (Rental Bonds) Act 1977 by not requiring payment to the Rental Bond Board of a rental bond lodged under a boarding agreement or lodging agreement.

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Clause 51 amends the Residential Tenancies Act 1987 by requiring the annual report of the Tenancy Commissioner to include a report on the operation of the proposed Act.

SCHEDULE 1—SAVINGS AND TRANSITIONAL PROVISIONS

This Schedule provides savings and transitional provisions applicable on the enactment of the proposed Act.



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SCHEDULE 1—SAVINGS AND TRANSITIONAL PROVISIONS

BOARDING HOUSES AND LODGING HOUSES BILL 1991

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No. , 1991

A BILL FOR

An Act relating to the rights and obligations of the operators and residents of boarding houses and lodging houses; and for other purposes.

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The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the Boarding Houses and Lodging Houses Act 1991.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Definitions

3. (1) In this Act:

“**boarder**” means the tenant under a boarding agreement, unless:

- (a) the owner of the boarding house is a proprietary company and the tenant is a shareholder in the company; or
- (b) the tenant is a member of the owner’s family; or
- (c) the tenant is the manager of the boarding house;

“**boarding agreement**” means a lodging agreement under which the tenant is entitled to be supplied with meals;

“**boarding house**” means a lodging house in which meals are, or are to be, supplied to one or more of the tenants under a boarding agreement, or boarding agreements, relating to the premises;

“**investigator**” means an investigator holding office under section 30;

“**lodger**” means the tenant under a lodging agreement, unless:

- (a) the owner of the lodging house is a proprietary company and the tenant is a shareholder in the company; or
- (b) the tenant is a member of the owner’s family; or
- (c) the tenant is the manager of the lodging house;

“**lodging agreement**” means (whether or not it is also a boarding agreement) an agreement which:

- (a) relates to a room in a lodging house; and
- (b) is a residential tenancy agreement within the meaning of the Residential Tenancies Act 1987; and
- (c) by section 6 of that Act, is excluded from the operation of that Act because the tenant is a boarder or lodger;

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“lodging house” means premises used, or intended to be used, as a place of residence in which separate accommodation is offered or provided for at least 3 lodgers, whether or not any of them is also a boarder;

“owner”, in relation to premises comprising a boarding house or a lodging house, includes:

- (a) a lessee of the premises who, otherwise than as a boarder or lodger, has the power to maintain an action of trespass in relation to the premises; and
- (b) the heirs, executors, administrators and assigns of the owner or such a lessee;

“premises” includes a part of premises;

“rental bond”, in relation to a boarding agreement or lodging agreement or a proposed boarding agreement or lodging 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;

“room” includes more than one room only if they are all adjoining rooms with the same initial access;

“Tenancy Commissioner” means the Tenancy Commissioner holding office under the Residential Tenancies Act 1987;

“Tribunal” means the Residential Tenancies Tribunal constituted by the Residential Tenancies Act 1987.

(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, if the function is a duty, a reference to the performance of the duty.

Act binds the Crown (RTA s. 4)

4. 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.

Application of Act (RTA s. 5)

5. (1) This Act applies to boarding agreements and lodging agreements made after the commencement of this section.

(2) This Act, except as provided by Schedule 1 and this section, applies to oral boarding agreements and oral lodging agreements made before the commencement of this section.

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(3) This Act, except as provided by Schedule 1 and this section, applies to boarding agreements and lodging agreements made before the commencement of this section if they are in writing or are partly written and partly oral.

(4) If this Act applies to a boarding agreement or a lodging agreement, it so applies despite the terms of the agreement or of any other contract, agreement or arrangement, whether made before or after the commencement of this section.

Premises to which Act does not apply (RTA s. 6)

6. This Act does not apply to:
- (a) premises to which prescribed provisions of the Landlord and Tenant (Amendment) Act 1948 apply; or
 - (b) premises comprising a hotel or motel; or
 - (c) premises ordinarily used for holiday purposes; or
 - (d) premises comprising, or forming part of, an educational institution, hospital or nursing home; or
 - (e) club premises; or
 - (f) premises which are, or are a part of, a retirement village to which the Retirement Village Industry Code of Practice Regulation 1989 in force under the Fair Trading Act 1987 applies; or
 - (g) premises which are the subject of an Act of the Commonwealth and are declared by the regulations to be premises to which this Act does not apply; or
 - (h) premises declared by the regulations to be a charitable refuge or crisis accommodation; or
 - (i) any other premises prescribed by the regulations as premises to which this Act does not apply; or
 - (j) a room situated in premises referred to in the preceding paragraphs.

Agreements to which Act does not apply (RTA s. 6)

7. This Act does not apply to a boarding agreement or a lodging agreement:

- (a) if the relevant room is in premises the subject of an agreement to which the boarder or lodger is a party and which has been made in good faith for the sale or purchase of the premises; or
- (b) if the agreement arises under a mortgage entered into in good faith in respect of the premises in which the relevant room is situated; or

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- (c) if the agreement arises under a company title scheme under which a corporation owns a group of adjoining or adjacent premises and lets the premises to persons who jointly have a controlling interest in the scheme; or
- (d) if the relevant room is not ordinarily used for holiday purposes and the agreement is made in good faith for the purpose of giving a person the right to occupy the room for a period of not more than 2 months for the purposes of a holiday; or
- (e) in circumstances prescribed by the regulations as circumstances in which this Act does not apply to a boarding agreement or a lodging agreement.

PART 2—AGREEMENTS

Division 1—General

Standard form of agreement (RTA s. 8)

8. (1) The regulations may make provision for a standard form of boarding agreement or lodging agreement.

(2) A standard form of boarding agreement or lodging agreement:

- (a) is to be taken to include all terms specified by or under this Act as being terms of such an agreement; and
- (b) may set out those terms, or any of them, or provisions to the same effect; and
- (c) is not to exclude or vary the effect of any of those terms; and
- (d) may include other terms not inconsistent with this Act.

Agreements to be in standard form if applicable (RTA ss. 9, 17)

9. (1) If a boarding agreement or lodging agreement for which there is a standard form is entered into and, but for this subsection, it would not be a written agreement in the standard form, the agreement is to be taken:

- (a) to have been entered into in writing in the standard form; and
- (b) to include any additional terms authorised by section 10.

(2) A term of a boarding agreement or a lodging agreement for which there is a standard form is void to the extent that, except as provided by section 10, it is not in or to the effect of the standard form.

(3) If the terms of a standard form of boarding agreement or lodging agreement are varied by the parties to the agreement and the variation is not permitted by this Act, the agreement is void to the extent of the variation.

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(4) It is a term of a boarding agreement or a lodging agreement that it does not take effect unless:

- (a) the boarder or lodger has been given a copy of the executed agreement; and
- (b) the parties have agreed on, signed and exchanged copies of a written report relating to the condition of the room, and anything in the room, to be occupied under the agreement.

(5) This section does not operate to render void, or prevent from taking effect, a right to occupy a room, or to receive meals, conferred by a boarding agreement or a lodging agreement.

Additional terms of agreement (RTA s. 10)

10. (1) The parties to a standard form of boarding agreement or lodging agreement may include additional terms in the agreement but only if the additional terms do not contravene this or any other Act and are not inconsistent with the standard form.

(2) An additional term in the agreement is void if the Tribunal so orders on being satisfied, on the application of a party to the agreement, that the term is not authorised by this section.

Terms in Act to prevail (RTA s. 11)

11. A term of a boarding agreement or a lodging agreement is void to the extent that it is inconsistent with any term included in the agreement by the operation of this Act.

Rental bonds

12. (1) If a boarding agreement or a lodging agreement entered into after the commencement of this section provides for the deposit as a rental bond of an amount exceeding 1 week's rent, the provision is void to the extent of the excess.

(2) An owner of a boarding house or a lodging house who accepts from a boarder or lodger a deposit as a rental bond of an amount exceeding 1 week's rent is guilty of an offence.

Maximum penalty: 5 penalty units.

Limitation of amount paid for agreement (RTA s. 37)

13. A person who receives from a boarder or lodger, or a prospective boarder or lodger, any payment for entering into, renewing, extending or continuing a boarding agreement or a lodging agreement is guilty of an

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offence unless the payment is made as rent, as a rental bond or as a fee or other payment provided for by the regulations.

Maximum penalty: 2 penalty units.

Breach of agreement and settlement of disputes (RTA s. 16)

14. (1) If a party to a boarding agreement or a lodging agreement claims that there has been a breach of the agreement by another party, the claimant may, not later than 1 month after becoming aware of the act or omission claimed to be such a breach, apply to the Tribunal for an order under this section.

(2) If a party to a boarding agreement or a lodging agreement is in dispute over the agreement with another party to the agreement, either party may apply to the Tenancy Commissioner for settlement of the dispute.

(3) If the dispute is not settled by the Tenancy Commissioner, either party may, with the consent of the Commissioner, apply to the Tribunal for an order under this section in respect of the matter in dispute.

(4) On an application under this section in relation to a boarding agreement or a lodging agreement, the Tribunal may make any one or more of the following orders:

- (a) an order for the payment of an amount of money;
- (b) an order requiring a party to the agreement to perform such work, or take such other steps, as the order specifies to remedy a breach of the agreement;
- (c) an order for payment of compensation;
- (d) an order requiring all or part of the rent under the agreement to be paid to the Tribunal until the agreement, or a part of the agreement, has been performed or any application for compensation has been determined;
- (e) an order that requires rent paid to the Tribunal to be paid out towards the cost of remedying any breach of the agreement or towards payment of any compensation;
- (f) an order terminating the agreement.

(5) On an application under this section, the Tribunal may, in addition to, or instead of, making an order under subsection (4), make an order that:

- (a) restrains any action in breach of the agreement; or
- (b) requires an action to be taken in performance of the agreement,

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even if the order provides a remedy in the nature of an injunction or specific performance in circumstances in which such a remedy would not otherwise be available.

(6) An order under this section for payment of compensation does not limit any other power of the Tribunal to order payment of compensation.

Division 2—Rents

Rent in advance (RTA s. 38)

15. (1) A person who, as owner or on behalf of the owner, of a boarding house or a lodging house:

- (a) enters into a boarding agreement or a lodging agreement requiring the boarder or lodger to pay more than 1 week's rent in advance; or
- (b) requires rent for a period under a boarding agreement or a lodging agreement to be paid before the end of the last preceding period for which the rent was paid,

is guilty of an offence.

Maximum penalty: 20 penalty units.

(2) This section does not preclude acceptance of an offer by a boarder or lodger to pay more than 1 week's rent in advance.

Rent receipts (RTA s. 40)

16. (1) If a boarder or lodger pays rent in person and is not given a receipt for the payment without delay, the person who received the payment is guilty of an offence.

Maximum penalty: 5 penalty units.

(2) If a boarder or lodger pays rent otherwise than in person, the owner of the boarding house or lodging house is guilty of an offence if a receipt for the payment is not, without delay, made available for collection by, or posted to, the boarder or lodger.

Maximum penalty: 5 penalty units.

(3) A receipt is not a receipt for the purposes of this section unless it includes the following particulars:

- (a) the name of the person who received the rent or on whose behalf the rent was received; and
- (b) the name of the boarder or lodger who paid the rent; and
- (c) the number, or other identification, of the room for which the rent was paid; and

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- (d) the period for which the rent was paid; and
- (e) the date of receipt of the rent; and
- (f) the amount paid.

(4) This section does not apply to rent that, by arrangement between the owner of the boarding or lodging house and the boarder or lodger making the payment, is paid to the credit of an account with a bank, building society or similar body nominated by the owner.

Rent records (RTA s. 41)

17. (1) An owner of a boarding house or a lodging house who fails to keep, or cause to be kept, a record of rent received under each boarding agreement or lodging agreement is guilty of an offence.

(2) The owner of a boarding house or a lodging house who fails to keep for a period of at least 12 months:

(a) a record of rent received by the owner from a boarder or lodger during the period; and

(b) a copy of each rent receipt issued by the owner during the period, is guilty of an offence.

(3) An agent of an owner of a boarding house or a lodging house who fails to keep for a period of at least 12 months:

(a) a record of rent received from a boarder or lodger during the period on behalf of the owner; and

(b) a copy of each rent receipt issued by the agent during that period on behalf of the owner,

is guilty of an offence.

(4) A person who makes in a record required to be kept under this section an entry which the person knows is false in a material particular is guilty of an offence.

Maximum penalty: 5 penalty units.

Increase of rent (RTA ss. 44, 45)

18. (1) The rent payable under a boarding agreement or a lodging agreement is not to be increased except by written notice given to the boarder or lodger which states:

(a) the amount of the increased rent; and

(b) the date from which it is payable, being a date that is not earlier than 10 days after the giving of the notice.

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(2) The rent payable under a boarding agreement or a lodging agreement that creates a tenancy for a fixed term is not to be increased during the term unless the amount of the increase, or a method of calculating the increase, is set out in the agreement.

(3) An owner of a boarding house or a lodging house who fails to comply with subsection (1) or (2) in relation to a boarding agreement or a lodging agreement to which the owner is a party is guilty of an offence.

Maximum penalty: 5 penalty units.

(4) A notice given under this section may be cancelled by a later notice or a later notice may provide for a lesser increase than that specified in the earlier notice.

(5) A later notice has effect instead of the earlier notice and takes effect from the date on which the earlier notice was to take effect.

(6) If a notice taking effect under this section increases the rent payable under a boarding agreement or a lodging agreement, it operates to vary the agreement accordingly.

(7) This section applies to a rent increase even if the amount, or a method of calculating the amount, of such an increase is a term of the boarding agreement or lodging agreement.

Division 3—Termination of agreements

Circumstances in which agreement terminates (RTA s. 53)

19. (1) A boarding agreement or a lodging agreement terminates only in one or more of the following circumstances:

- (a) if the boarder or lodger, after giving the owner a period of notice that complies with section 20, vacates the relevant room on or before expiration of the period of notice;
- (b) if the owner gives the boarder or lodger a period of notice that complies with section 20 and the period expires or the boarder or lodger earlier delivers possession of the room to the owner;
- (c) if the Tribunal orders termination of the agreement;
- (d) if a person having title to the boarding house or lodging house superior to that of the owner becomes entitled to possession of the premises comprising the boarding house or lodging house;
- (e) if a person succeeding to the title of the boarding house or lodging house becomes entitled to possession of the premises to the exclusion of the boarder or lodger;

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- (f) if the boarding house or lodging house is mortgaged and the mortgagee becomes entitled to possession of the mortgaged premises to the exclusion of the boarder or lodger;
- (g) if the boarder or lodger abandons the room the subject of the agreement;
- (h) if the boarder or lodger, with the consent of the owner, delivers up possession of the room the subject of the agreement, even if the consent of the owner is later withdrawn;
- (i) if there is a merger of the interests in the boarding house or lodging house of the boarder or lodger with those of the owner;
- (j) if the boarding agreement or lodging agreement is terminated in accordance with section 21.

(2) Notice for the purposes of this section:

- (a) must be in writing if given by the owner or if given by the boarder or lodger and required by the owner to be in writing; or
- (b) may be verbal if given by the boarder or lodger and not required by the owner to be in writing.

(3) Notice of termination of a boarding agreement or lodging agreement is of no effect if it is given in response to the exercise, or proposed exercise, by the boarder or lodger of a right under this Act.

Period of notice for termination of agreement

20. The period of notice required for termination of a boarding agreement or a lodging agreement otherwise than as provided by section 21 is:

- (a) 2 days' notice by the owner if the boarder or lodger is in arrears with payment of board or rent for more than 7 days; or
- (b) 7 days' notice by the owner, or by the boarder or lodger, in any other case if the agreement has expired; or
- (c) the period prescribed by the regulations for the giving of notice in other circumstances.

Termination of agreement with immediate notice or without notice (RTA ss. 61, 68)

21. (1) If a room is the subject of a boarding agreement or a lodging agreement and, otherwise than as a result of a breach of the agreement:

- (a) is rendered wholly or partly uninhabitable; or
- (b) ceases to be usable as a residence; or
- (c) is acquired by compulsory process,

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the rent abates accordingly and the owner of the boarding house or lodging house may give immediate notice of termination of the agreement even if it is an agreement for a fixed term.

(2) If a boarder or lodger intentionally or recklessly does or causes or permits to be done, or is likely intentionally or recklessly to do or cause or permit to be done, anything that results in:

- (a) serious damage to the boarding house or lodging house; or
- (b) injury to the owner or manager of the boarding house or lodging house or to a person who is in occupation of, or permitted to be in, adjoining or adjacent premises, whether or not those premises are part of the boarding house or lodging house,

the owner may, with or without notice, terminate the boarding agreement or lodging agreement and take possession of the room to which it relates.

Apportionment and recovery of rent on termination (RTA s. 54)

22. The rent payable under a boarding agreement or a lodging agreement accrues from day to day and, on termination of the agreement, the appropriate amount is payable.

Breach or notice of termination not waived by acceptance of rent (RTA s. 55)

23. A demand by the owner under a boarding agreement or a lodging agreement for payment of rent under the agreement, or the acceptance of any such rent, or the taking of proceedings for the recovery of any such rent:

- (a) does not operate as a waiver of any breach of the agreement or of any notice of termination given by the owner on the ground of breach of the agreement; and
- (b) is not evidence of the creation of a new boarding agreement or lodging agreement.

Unlawful entry to recover possession

24. (1) The owner of a boarding house or a lodging house is guilty of an offence if the owner, or a person authorised by the owner, enters a room on the premises that is the subject of a boarding agreement or a lodging agreement in order to take possession of the room before the agreement terminates.

Maximum penalty: 50 penalty units.

(2) In a prosecution for an offence under this section, proof of service of a notice terminating the agreement is not a defence unless the court is

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satisfied that there were adequate grounds for termination of the agreement.

(3) The court finding that an offence under this section has been proved may, whether or not proceeding to conviction or imposing a penalty for the offence, order the owner to pay such reasonable compensation as the court thinks fit to the boarder or lodger occupying the room in relation to which the offence was committed.

(4) Compensation ordered by a court under this section is recoverable as if the order were a judgment by the court for a debt of the same amount owed by the owner to the boarder or lodger.

Exclusion of jurisdiction for recovery of possession (RTA s. 71)

25. Proceedings by an owner for recovery of possession of a room the subject of a boarding agreement or a lodging agreement are not within the jurisdiction of the Supreme Court, the District Court or a Local Court.

Mitigation of loss by owner (RTA s. 78)

26. If a room the subject of a boarding agreement or a lodging agreement is abandoned by the boarder or lodger, the owner of the boarding house or lodging house is to take all reasonable steps to mitigate any loss and is not entitled to compensation for any loss that could have been avoided by taking those steps.

Goods left by boarder or lodger after termination of agreement (RTA s. 79)

27. (1) If a boarding agreement or a lodging agreement is terminated and goods of the former boarder or lodger are left in the boarding house or lodging house, the owner of the boarding house or lodging house may:

- (a) apply to the Tribunal for an order under this section; or
- (b) dispose of the goods in accordance with any provision made by the regulations for disposal of the goods; or
- (c) act under both paragraph (a) and paragraph (b).

(2) The Tribunal may, on the application of the owner, make any one or more of the following orders:

- (a) an order authorising the removal, destruction or disposal of the goods;
- (b) an order authorising sale of the goods;
- (c) an order as to the manner of any such sale;
- (d) an order for disposal of the proceeds of any such sale;

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(e) an order as to the giving of notice of any action or proposed action in relation to the goods to the former boarder or lodger or to any other person.

(3) A purchaser of goods sold in accordance with an order of the Tribunal or the regulations acquires a good title to the goods freed and discharged from any interest of the former boarder or lodger or any other person.

(4) The owner of a boarding house or a lodging house does not incur any liability in respect of the removal, destruction, disposal or sale of goods in accordance with an order of the Tribunal or in accordance with the regulations.

PART 3—ADMINISTRATION

Functions of Tenancy Commissioner (RTA s. 118)

28. (1) The Tenancy Commissioner has, in addition to any other functions conferred or imposed on the Tenancy Commissioner, the following functions:

- (a) to investigate and carry out research into matters relating to or affecting the relationship between owners of boarding houses and owners of lodging houses on the one hand and boarders and lodgers on the other;
- (b) to investigate and attempt to resolve complaints by owners of boarding houses, owners of lodging houses, boarders and lodgers;
- (c) to distribute information about this Act and the services provided by the Commissioner and the Tribunal in relation to owners of boarding houses, owners of lodging houses, boarders and lodgers;
- (d) to investigate and report on any matters, or to make inquiries in relation to any matters, referred to the Commissioner by the Minister in connection with this Act, or by the Tribunal.

(2) It is also a function of the Tenancy Commissioner to work, co-operate and exchange information with, to consult, and to provide financial help to, government departments, administrative offices, public authorities and any other bodies which, or any persons who:

- (a) advise owners of boarding houses, owners of lodging houses, boarders or lodgers with respect to boarding agreements or lodging agreements; or
- (b) distribute information about boarding agreements or lodging agreements; or

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- (c) investigate or carry out research into matters relating to or affecting the relationship between owners of boarding houses and lodging houses on the one hand and boarders and lodgers on the other.

Delegation by Tenancy Commissioner (RTA s. 119)

29. The Tenancy Commissioner may delegate to a public servant or a prescribed person any of the functions of the Tenancy Commissioner under this Act, other than this power of delegation.

Appointment and functions of investigator (RTA ss. 119A, 119B)

30. (1) The Minister may appoint an investigator holding office under the Residential Tenancies Act 1987 as an investigator for the purposes of this Act.

(2) An investigator is not to exercise a function conferred by this Act unless authorised to do so by the Tenancy Commissioner, but is not required, in proceeding to exercise the function in relation to a person, to establish to the person that the authority of the Tenancy Commissioner has been given.

(3) If the Tenancy Commissioner believes on reasonable grounds that a person has information, documents or other evidence that may disclose an offence under this Act, an investigator may give the person a written notice requiring the person:

- (a) to provide an investigator with any such information by means of a written statement signed by the person and given to the investigator within a time specified in the notice; or
- (b) to produce to an investigator, in accordance with the notice, any such documents; or
- (c) to appear before an investigator, at a time and place specified in the notice, and give any such evidence, either orally or in writing, and produce any such documents.

(4) If the Tenancy Commissioner believes on reasonable grounds that a person has engaged, or is engaging, in conduct that may be an offence under this Act, an investigator may:

- (a) enter any premises on which it may reasonably be suspected that there are documents that are in the possession or under the control of the person and that could confirm the Tenancy Commissioner's belief; and
- (b) make copies of, or take extracts from, the documents in so far as they are relevant to the Tenancy Commissioner's belief.

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(5) A person who:

- (a) refuses or fails to comply with a notice under this section to the extent that the person is able to do so; or
- (b) in purported compliance with such a notice, provides information, or gives evidence, that the person knows to be false or misleading; or
- (c) hinders or obstructs an investigator exercising functions under this section,

is guilty of an offence.

Maximum penalty: 5 penalty units.

(6) A person who claims that compliance with a requirement of an investigator under this section could result in self-incrimination may refuse to comply with the requirement.

(7) This section does not authorise entry on a part of premises being used for residential purposes unless the occupier of that part of the premises consents.

(8) Section 32 (Powers of entry) applies in relation to the exercise of the power to enter premises conferred by this section.

Inspection of document produced on notice (RTA s. 119C)

31. (1) If a document is produced in accordance with a notice under section 30, the Tenancy Commissioner, an investigator, or a person who is authorised for the purpose by the Tenancy Commissioner, may:

- (a) inspect the document and make copies of, or take extracts from, the document; or
- (b) take possession of the document and retain possession for as long as, in the opinion of the Tenancy Commissioner, it is necessary to do so for the purposes of this Act.

(2) A person who is otherwise entitled to possession of a document retained under this section is entitled to be supplied, on application, with a copy of the document certified as a true copy by the Tenancy Commissioner.

(3) A copy of a document certified under this section is admissible as evidence in all courts as if it were the original.

Powers of entry

32. (1) This section applies to the power of entry conferred by section 30.

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(2) The power to which this section applies may not be exercised unless the person proposing to exercise the power:

- (a) is in possession of a certificate of authority issued to the person by the Minister; and
- (b) gives reasonable notice to the occupier of the premises of intention to exercise the power, unless the giving of notice would defeat the purpose for which it is intended to exercise the power; and
- (c) exercises the power at a reasonable time, unless it is being exercised in an emergency; and
- (d) produces the certificate of authority if required to do so by the occupier of the premises; and
- (e) uses no more force than is reasonably necessary to effect the entry.

(3) A certificate of authority must:

- (a) state that it is issued under this Act; and
- (b) give the name of the person to whom it is issued; and
- (c) describe the nature of the powers conferred and the source of the powers; and
- (d) state the date, if any, on which it expires; and
- (e) describe the kind of premises to which the power extends.

(4) If unauthorised damage is caused to property by a person exercising the power to which this section applies, the reasonable cost of repairing the damage is recoverable from the Crown by the person whose property was damaged unless the occupier of the premises obstructed the entry.

Exclusion of personal liability (RTA s. 119D)

33. Neither the Tenancy Commissioner nor any other person exercising a function under this Act incurs any personal liability for an act or omission done in good faith for the purpose of executing this Act.

Tenancy Commissioner may represent boarder or lodger (RTA s. 95)

34. In any proceedings before the Tribunal, a boarder or lodger may, despite any provision of the Residential Tenancies Act 1987, be represented by the Tenancy Commissioner or by a barrister, solicitor or agent for the Commissioner.

Tenancy Commissioner may take or defend proceedings (RTA s. 96)

35. (1) If a boarder or a lodger makes a complaint to the Tenancy Commissioner, and the Commissioner:

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- (a) after investigating the complaint is satisfied that the boarder or lodger may have a right to take or defend proceedings before the Tribunal; and
- (b) is of the opinion that it is in the public interest that the Commissioner should take or defend the proceedings on behalf of the boarder or lodger,

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

(2) The Tenancy Commissioner is to take or defend proceedings before the Tribunal on behalf of a boarder or lodger if the Minister so directs and the boarder or lodger consents.

Conduct of proceedings by Tenancy Commissioner (RTA s. 97)

36. If the Tenancy Commissioner takes or defends proceedings before the Tribunal on behalf of a boarder or lodger:

- (a) the Commissioner has the conduct of the proceedings and may appear personally or by barrister, solicitor or agent; and
- (b) the Commissioner may do all such things as may be necessary or expedient to give effect to an order or decision of the Tribunal made or given in the proceedings; and
- (c) the Commissioner is liable to pay the costs (if any) of the boarder or lodger in the proceedings; and
- (d) the boarder or lodger is liable to pay any other amount that the Tribunal orders the boarder or lodger to pay.

PART 4—MISCELLANEOUS

Extension of time (RTA s. 99)

37. The Tribunal may, of its own motion, or on application, extend the time for doing anything under this Act, whether or not the time to be extended has expired.

Contracting out prohibited (RTA s. 120)

38. (1) A person who enters into an agreement, contract or arrangement with the intention of directly or indirectly defeating, evading or preventing the operation of a provision of this Act is guilty of an offence.

Maximum penalty: 20 penalty units.

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(2) The provisions of this Act have effect despite any stipulation to the contrary in any agreement, contract or arrangement made or entered into before or after the commencement of this section.

(3) The operation of this Act is not annulled, varied or excluded:

- (a) by any provision of a boarding agreement or lodging agreement; or
- (b) by any provision of any other agreement, contract or arrangement, whether the provision is oral or wholly or partly written, and whether made or entered into before or after the commencement of this section.

Costs in court proceedings (RTA s. 120A)

39. If proceedings in a court could have been taken before the Tribunal, the court may order the plaintiff to pay a specified amount as, or towards, the defendant's costs if the court considers that the proceedings should have been taken before the Tribunal.

Disclosure of information (RTA s. 121)

40. A person who discloses any information obtained in the course of administering or executing this Act is guilty of an offence unless the disclosure is made:

- (a) with the consent of the person from whom the information was obtained; or
- (b) in the course of administering or executing this Act or the Residential Tenancies Act 1987; or
- (c) for the purpose of any legal proceedings arising out of this Act or in a report of any such proceedings; or
- (d) in accordance with a requirement made under the Ombudsman Act 1974; or
- (e) with other lawful excuse.

Maximum penalty: 5 penalty units.

Time for institution of proceedings (RTA s. 124)

41. Proceedings for an offence under this Act may be brought within the period of 3 years after the alleged commission of the offence or, if the Attorney General consents, at a later time.

Contracts Review Act 1980 (RTA s. 126)

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

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Offences by corporations (RTA s. 127)

43. (1) If a corporation commits an offence under this Act, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have committed the same offence if the person knowingly authorised the act or omission that constituted the offence.

(2) A person may be proceeded against under this section, and convicted, for an offence whether or not the corporation has been proceeded against, or convicted, for the same offence.

(3) This section does not affect any liability imposed on a corporation for an offence committed by it under this Act.

(4) This section does not apply to a director of, or a person concerned in the management of, a statutory corporation.

Aiding, abetting etc. commission of an offence (RTA s. 128)

44. A person who:

- (a) aids, abets, counsels or procures a person to commit an offence under this Act; or
- (b) induces, or attempts to induce, a person, whether by threats or promises or otherwise, to commit such an offence; or
- (c) is, whether directly or indirectly, knowingly concerned in, or party to, the commission of such an offence; or
- (d) conspires with another person to commit such an offence,

is taken to have committed the same offence.

Service of documents

45. (1) A notice or other document required by this Act to be given by an owner of a boarding house or lodging house to a boarder or lodger may be given by delivering it to the boarder or lodger personally or by leaving it in a conspicuous place in the room occupied by the boarder or lodger.

(2) A notice or other document required by this Act to be given by a boarder or lodger to the owner of the boarding house or lodging house may be given:

- (a) by delivering it to the owner personally or, if the boarding house or lodging house is managed on behalf of the owner, to the manager; or

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- (b) by leaving it in a receptacle provided at the boarding house or lodging house by the owner for the receipt by the owner of mail or other documents; or
- (c) by sending it to the owner by post.

Agent may act for boarder or lodger in certain cases (RTA s. 31)

46. (1) A boarder or lodger who, because of:

- (a) intellectual impairment or physical impairment; or
- (b) illiteracy or an inability to read or write English well enough; or
- (c) absence from the boarding house or lodging house,

is unable to deal with notices or other documents given to the person under the boarding agreement or lodging agreement, or under this Act, may appoint an agent for the purpose of receiving any or all of the notices or documents other than a notice terminating the agreement.

(2) An appointment under this section:

- (a) may be made in the boarding agreement or lodging agreement or at any time after the agreement commences; and
- (b) may be revoked by the boarder or lodger at any time.

(3) Revocation of an appointment under this section by a boarder or lodger has no effect until it is notified to the owner of the boarding house or lodging house.

(4) Until an appointment by a boarder or lodger of an agent under this section expires or is revoked, a person who was notified of the appointment is to give to the agent any notice or other document required by the boarding agreement or lodging agreement, or by this Act, to be given to the boarder or lodger, unless it is a notice terminating the agreement.

Continuation of jurisdiction conferred on Tribunal

47. Nothing in this Act precludes the operation in relation to this Act of any of the provisions of the Residential Tenancies Act 1987 that confer on the Tribunal functions under an Act other than that Act.

Regulations

48. (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.

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(2) In particular, the regulations may make provision for or with respect to the following:

- (a) terms that are to be taken as included in a boarding agreement or a lodging agreement;
- (b) the provision of information by an owner of a boarding house or lodging house before entering into an agreement with a boarder or lodger;
- (c) the maximum charge for preparation of a boarding agreement or lodging agreement;
- (d) the execution of a boarding agreement or lodging agreement by a boarder or lodger, or a prospective boarder or lodger, who suffers from a disability;
- (e) goods abandoned by a boarder or a lodger.

(3) The regulations may create an offence punishable by a penalty not exceeding 5 penalty units.

Savings and transitional provisions

49. Schedule 1 has effect.

Amendment of Landlord and Tenant (Rental Bonds) Act 1977 No. 44

50. The Landlord and Tenant (Rental Bonds) Act 1977 is amended by inserting before section 8 the following section:

Boarding houses and lodging houses

7A. This Part does not apply to a rental bond lodged after the commencement of this section with the owner of a boarding house or a lodging house within the meaning of the Boarding Houses and Lodging Houses Act 1991.

Amendment of Residential Tenancies Act 1987 No. 26

51. The Residential Tenancies Act 1987 is amended by inserting in section 119E (1) after the words "that year", the words "under this and any other Act".

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SCHEDULE 1—SAVINGS AND TRANSITIONAL PROVISIONS

(Secs. 5, 49)

Part 1—Preliminary

Regulations

1. (1) The regulations may include provisions of a savings or transitional nature consequent on the enactment of this Act.

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

(3) To the extent that 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:

- (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.

Part 2—Provisions consequent on enactment of this Act

Application of certain provisions to wholly or partly written agreements (RTA Sch. 2, cl. 9)

2. If a boarding agreement or lodging agreement made before the commencement of section 5 is in writing or is partly written and partly oral, Division 1 of Part 2 and sections 19, 21, 22, 23, 26, 27 and 46 apply to the agreement from a day prescribed by the regulations for the purposes of this clause, but so apply only in the manner and to the extent provided by the regulations.

Application of sec. 9 to oral agreements (RTA Sch. 2, cl. 1)

3. In so far as it requires a boarder or lodger to be given a copy of the boarding agreement or lodging agreement, section 9 does not apply to an agreement made before the commencement of section 5.

Application of sec. 14 to certain breaches and disputes (RTA Sch. 2, cl. 2)

4. An application may not be made under section 14 in relation to a breach of, or dispute over, an oral boarding agreement or an oral lodging agreement if the breach occurred, or the dispute arose, before the commencement of section 5.

Previous actions etc. not affected (RTA Sch. 2, cl. 8)

5. This Act does not affect:

- (a) the validity of anything done or payment made before the commencement of section 5 in accordance with a term of an oral boarding agreement or an oral lodging agreement that contravenes, is ineffective or is void because of this Act; or

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SCHEDULE 1—SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

- (b) any right or remedy which, under an oral boarding agreement or an oral lodging agreement, the owner, boarder or lodger would have had but for this Act in relation to anything done or payment made as referred to in paragraph (a), or in relation to any breach of the agreement that occurred before the commencement of section 5.
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