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Robyn Webb
Chief Parliamentary Counsel
Dated 19 November 2020



TASMANIA

RESIDENTIAL TENANCY ACT 1997

No. 82 of 1997

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RESIDENTIAL TENANCY ACT 1997

No. 82 of 1997

An Act to regulate tenancies of residential premises

[Royal Assent 14 January 1998]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Residential Tenancy Act 1997*.

2. Commencement

This Act commences on a day to be proclaimed.

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3. Interpretation

(1) In this Act –

abandoned means abandoned as referred to in section 47;

agent means –

- (a) in relation to an owner, a person authorised by the owner to act on behalf of the owner in any matter to which this Act relates and who is not, in relation to the premises of the owner, a residential manager of the premises; or
- (b) in relation to a tenant, a person authorised by the tenant to act on behalf of the tenant in any matter to which this Act relates;

Authority means the Rental Deposit Authority established under section 48K;

boarding premises means a room and any other facilities provided with the room where –

- (a) the room is occupied as a principal place of residence; and
- (b) any of the bathroom, toilet or kitchen facilities are shared with other persons –

but does not include premises located in a building occupied predominately by –

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(c) tertiary students; or

(d) TasTAFE students within the meaning of the *Training and Workforce Development Act 2013*;

claim form means the form specified in section 27(b);

commencement day means the day on which this Act commences;

Commissioner means the Residential Tenancy Commissioner appointed under section 7;

condition report means a report referred to in section 26;

Court means the Magistrates Court exercising its civil jurisdiction in the civil division of that Court established under the *Magistrates Court (Civil Division) Act 1992*;

COVID-19 Emergency Act means the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*;

COVID-19 emergency day means the day on which the COVID-19 Emergency Act commences;

deposit contributor means a person or organisation, whether public or private, that –

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- (a) is prescribed by the regulations for the purposes of this definition; and
- (b) has paid to the Authority the whole or any part of a security deposit;

Director of Consumer Affairs and Fair Trading means the person appointed as such under the *Consumer Affairs Act 1988*;

Director of Housing means the Director of Housing appointed under the *Homes Act 1935*;

dispute means a dispute referred to in section 29F;

domestic partner, in relation to an owner, means –

- (a) the spouse of the owner; or
- (b) a person who is in a significant relationship, within the meaning of the *Relationships Act 2003*, with the owner;

dwelling-house has the same meaning as in the *Homes Act 1935*;

early vacation means early vacation as referred to in section 46;

eligible person has the same meaning as in the *Homes Act 1935*;

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emergency period means the period –

- (a) beginning on the COVID-19 emergency day; and
- (b) ending on whichever is the last occurring of the following:
 - (i) the day 120 days after the COVID-19 emergency day;
 - (ii) a day to which the emergency period is extended by one or more orders under section 3A(1);
 - (iii) the day on which an order is made under section 3A(4) declaring that the emergency period has ended;

essential service means any of the following services:

- (a) water, sewerage, electricity, or heating, supplied to or within the premises;
- (b) a cooking stove, or hot-water service, installed within the premises;
- (c) removal of grey water from premises, including ensuring the

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effective functioning of any on-site water-treatment facility, but not including pipes, plumbing or other water-disposal or sewage-disposal facilities owned by a council –

and includes any tap washers, any light globes or light tubes that are inaccessible light globes or light tubes, and any fuses other than those that are within a meter box and relate to the supply of electricity to the premises;

grey water means grey water or sullage as defined in Australia New Zealand Standard AS/NZS 1547:2000 On-site domestic wastewater management;

holding agreement means an agreement referred to in section 31(1);

holding fee means a fee referred to in section 31(2);

housing support provider has the same meaning as in the *Homes Act 1935*;

inaccessible light globes or light tubes means light globes or light tubes that, when in place –

- (a) are above the height prescribed for the purposes of this definition; or
- (b) are not reasonably accessible;

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NDIS participant means a participant within the meaning of the *National Disability Insurance Scheme Act 2013* of the Commonwealth;

nominated repairer means a person nominated by the owner to carry out repairs to essential services;

notice of termination means a notice referred to in section 38;

notice to vacate means a notice referred to in section 42;

owner means –

- (a) a person who holds a legal estate in residential premises; and
- (b) that person's successors and assigns; and
- (c) an agent of that person; and
- (d) a mortgagee who made an application under section 85 of the *Land Titles Act 1980*; and
- (e) a mortgagee or encumbrancee who gave or left a notice under section 77 of the *Land Titles Act 1980*;

payment date means the date on which rent is due under a residential tenancy agreement;

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payment period means –

- (a) in respect of the first period of a new residential tenancy agreement, the period starting on the day on which occupancy is first granted under that residential tenancy agreement and ending on the day before the payment date; or
- (b) in any other case, the period starting on the payment date and ending on the day before the next payment date;

registered community housing provider has the meaning it has in the *Community Housing Providers National Law (Tasmania) Act 2013*;

rent means a payment payable under a residential tenancy agreement in respect of a period of tenancy;

rent assistance means the provision by the Director of Housing under section 15AB of the *Homes Act 1935*, or the provision by another social housing provider or a housing support provider, of an amount or amounts –

- (a) to an eligible person who, under a residential tenancy agreement, is leasing or sub-leasing a dwelling-house; or

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- (b) to a social housing provider or other person who is leasing, or sub-leasing, a dwelling-house to an eligible person under a residential tenancy agreement –

for the purpose of paying all, or part of, the eligible person’s rent under that agreement;

residential manager means a person who enters into a residential management agreement with the owner of residential premises under section 16A;

residential premises means premises, or part of premises, and land provided with the premises used or intended to be used as a place of residence and includes boarding premises;

residential tenancy agreement means an agreement referred to in Part 3;

SDA has the same meaning as in –

- (a) the *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2016* of the Commonwealth, as amended from time to time; or
- (b) any rules of the Commonwealth, as amended from time to time, which are made in substitution for those rules;

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security deposit means the payment referred to in section 25(1);

socially-dislocating disease means the disease, known as coronavirus disease 2019 (COVID-19);

social housing means –

- (a) residential premises owned in whole or in part by the Director of Housing; or
- (b) residential premises declared to be social housing under subsection (3); or
- (c) residential premises of a kind declared to be social housing under subsection (3); or
- (d) residential premises used, or proposed to be used, for a purpose declared under subsection (3);

social housing provider, in relation to residential premises, means –

- (a) the Director of Housing unless there is, in relation to those premises, a person referred to in paragraph (b), (c) or (d); or
- (b) a registered community housing provider in relation to those premises; or

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- (c) if those premises are social housing by reason of paragraph (b), (c) or (d) of the definition of social housing and a person, or a person of a class of persons, is declared in the notice under subsection (3) to be the social housing provider in respect of those premises, that person or the person of that class who leases or sub-leases, or proposes to lease or sub-lease, those premises to an eligible person; or
 - (d) if those premises are social housing by reason of paragraph (b), (c) or (d) of the definition of social housing and a person, or a person of a class of persons, is not declared in the notice under subsection (3) to be the social housing provider in respect of those premises, the person who leases or sub-leases, or proposes to lease or sub-lease, those premises to an eligible person;

subsequent COVID-19 emergency period
means a period specified in an order under section 3B;

suitable repairer means a person who –

- (a) holds a licence if required to do so under any Act to perform

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repairs to residential premises or essential services; and

- (b) ordinarily performs those repairs in the course of a business or as an employee of a business;

tenancy means the right of occupancy of residential premises under a residential tenancy agreement;

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

tertiary student means a person undertaking a course at an institution as defined by section 4 of the *Higher Education Funding Act 1988* of the Commonwealth;

working day means a weekday that is not a statutory holiday, within the meaning of the *Statutory Holidays Act 2000*, in the area in which the residential premises to which the residential tenancy agreement relates are situated.

- (2) A power or duty conferred or imposed on an owner under this Act is also a power or duty conferred or imposed on the agent of the owner.
- (3) The Minister from time to time responsible for social housing, by notice, may do any one or more of the following:
- (a) declare residential premises specified in the notice to be social housing;

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- (b) declare residential premises of a kind specified in the notice to be social housing;
- (c) declare residential premises used, or proposed to be used, for a purpose specified in the notice to be social housing;
- (d) declare a person, or a person of a class of persons, specified in the notice to be a social housing provider or the social housing provider in relation to premises referred to in paragraph (a), (b) or (c).

3A. Extension of emergency period for COVID-19 emergency

- (1) The Minister may, by order, extend the emergency period to a day specified in the order.
- (2) The Minister may, in an order under subsection (1), only extend the emergency period for a period of 90 days.
- (3) The Minister may make as many orders under subsection (1) as the Minister thinks are necessary to reasonably mitigate any significant, widespread, hardship caused, or likely to be caused, to a significant number of tenants by the effect of the presence in the State of the socially-dislocating disease and the risk of its spread amongst persons in the State.
- (4) The Minister must, by order, declare that the emergency period has ended, if the Minister is

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satisfied that the amendments to the operation of this Act made by the COVID-19 Emergency Act are no longer required to reasonably mitigate any significant, widespread, hardship caused, or likely to be caused, to a significant number of tenants by the effect of the presence in the State of the socially-dislocating disease and the risk of its spread in the State.

3B. Declaration of subsequent COVID-19 emergency periods

- (1) The Minister may, by order, declare a period specified in the order to be a subsequent COVID-19 emergency period.
- (2) The Minister may only declare a period to be a subsequent COVID-19 emergency period if the Minister is of the opinion that it is necessary to declare the period so as to reasonably mitigate any significant, widespread hardship that is caused, or is likely to be caused, to a significant number of tenants by the effect of –
 - (a) the presence in the State of the socially-dislocating disease; and
 - (b) the risk of its spread amongst persons in the State.
- (3) A period specified in an order under subsection (1) to be a subsequent COVID-19 emergency period may not be a period of more than 90 days.

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- (4) The Minister may make as many orders under subsection (1) as the Minister thinks fit.

4. Act binds Crown

This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

5. Application of Act

- (1) This Act applies to –
- (a) any residential tenancy agreement entered into on or after the commencement day; and
 - (ab) any residential tenancy agreement for boarding premises entered into on or after the commencement of the *Residential Tenancy Amendment (Boarding Premises) Act 2003*; and
 - (b) any residential tenancy agreement entered into before the commencement day –
 - (i) with effect from the first payment date that occurs 12 months after that day; or
 - (ii) if the agreement is renewed or extended within that 12 months, with effect from the day on which it is renewed or extended; and

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- (c) any residential tenancy agreement for boarding premises entered into before the commencement of the *Residential Tenancy Amendment (Boarding Premises) Act 2003* –
 - (i) with effect from the first payment date that occurs 12 months after that commencement; or
 - (ii) if the agreement is renewed or extended within that 12-month period, with effect from the day on which it is renewed or extended.
- (2) This Act applies to part of any residential premises used solely as a place of residence by a person employed as a caretaker, or in a similar capacity, for the premises.
- (3) This Act applies to an approved rental dwelling within the meaning of the *National Rental Affordability Scheme Regulations 2008* of the Commonwealth.

6. Non-application of Act

- (1) This Act does not apply to –
 - (a) any agreement under a mortgage in respect of residential premises; or
 - (b) any agreement relating to residential premises under a scheme under which –

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- (i) a group of adjacent or adjoining premises is owned by a company; and
 - (ii) the premises comprising the group are let by the company to persons who jointly have a controlling interest in the company; or
- (c) any agreement that is a residential management agreement under section 16A(1); or
 - (d) any memorandum of lease, registered under the *Land Titles Act 1980*, in respect of which the lessee is a social housing provider; or
 - (da) any lease to a social housing provider, by the Director of Housing, of residential premises; or
 - (db) any lease to a person of residential premises which are intended to be sub-leased to an eligible person; or
 - (e) any agreement giving a person a right of occupancy to residential premises not ordinarily used for holiday purposes for the purpose of a holiday for a period not exceeding 3 months.
- (2) This Act does not apply to any of the following:
- (a) any part of a hotel or motel that is not boarding premises;

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- (b) any premises ordinarily used for holiday purposes;
- (c) any boarding premises located in a building containing less than 3 boarding premises where –
 - (i) the owner occupies the same building as a principal place of residence; or
 - (ii) the tenant occupies the building as a principal place of residence and sub-lets the boarding premises;
- (d) any part of a hospital or nursing home;
- (e) any part of a club;
- (f) any premises used to provide residential care, within the meaning of the *Aged Care Act 1997* of the Commonwealth;
- (g) any premises in respect of which a memorandum of lease is registered under the *Land Titles Act 1980*, if the lessee of the premises is not a social housing provider.
- (ga) a residential tenancy agreement that is a residence contract within the meaning of the *Retirement Villages Act 2004*;
- (h - i)

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PART 2 – RESIDENTIAL TENANCY COMMISSIONER

7. Residential Tenancy Commissioner

- (1) The Minister may appoint a person as the Residential Tenancy Commissioner for the period, not exceeding 5 years, specified in the instrument of appointment.
- (2) An appointment under subsection (1) is subject to any terms and conditions the Minister determines.
- (3) The Commissioner may vacate, or be removed from, office in accordance with Schedule 1.

8. General functions and powers of Commissioner

- (1) The following are the functions of the Commissioner:
 - (a) to determine disputes arising in relation to the disbursement of security deposits;
 - (b) to determine disputes in relation to any residential tenancy database;
 - (c) to act in the mediation or conciliation of any disputes between the parties to residential agreements in relation to boarding premises;
 - (d) to determine applications made to the Commissioner under section 23 or section 36A;

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- (e) other functions conferred on the Commissioner by or under this Act.
- (2) The Commissioner may do anything that is necessary or incidental to carry out his or her functions under this Act and, in particular, his or her powers under section 23, section 36A, section 48I and section 48ZF.

9. Delegation by Commissioner

The Commissioner may delegate to any person any of his or her powers or functions, other than this power of delegation.

PART 3 – RESIDENTIAL TENANCY AGREEMENTS

Division 1 – Form of agreements

10. Residential tenancy agreement

- (1) A residential tenancy agreement exists where a right of occupancy of residential premises is granted by the owner of the premises to a person for value –
- (a) whether or not the right is a right of exclusive occupation; or
 - (b) whether the agreement is express or implied; or
 - (c) whether the agreement is oral or in writing, or partly oral and partly in writing; or
 - (d) whether or not the agreement is for a fixed period –

and includes a relevant social housing sub-lease.

- (1A) For the purposes of subsection (1), a relevant social housing sub-lease is a sub-lease by a social housing provider that is a lessee in relation to the premises by virtue of –
- (a) a memorandum of lease registered under the *Land Titles Act 1980*; or
 - (b) a lease, by the Director of Housing, of residential premises under the *Homes Act 1935*.

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- (2) A residential tenancy agreement is for a fixed period if it is for a period of at least 4 weeks.
- (3) The provisions of this Act form part of a residential tenancy agreement.

11. Expiry

- (1) A residential tenancy agreement for a fixed period, unless earlier terminated under Part 4, expires –
 - (a) on a date specified in the agreement; or
 - (b) if a date is not specified in the agreement, on a date agreed on by both parties.
- (2) If a residential tenancy agreement for a fixed period in relation to premises expires on a date and before that date –
 - (a) no notice to vacate in relation to the premises is served under section 42 on the grounds specified in section 42(1)(d); and
 - (b) the residential tenancy agreement is not extended or renewed –

a new residential tenancy agreement for no fixed period is established on that date in relation to the premises.

- (3) A residential tenancy agreement established under subsection (2) is subject to the same terms and conditions that existed before that establishment.

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(4) Despite subsection (1), if –

- (a) but for this subsection, a residential tenancy agreement for a fixed period in relation to premises would, under subsection (1), expire on a date; and
- (b) a notice to vacate in relation to the premises is served under section 42 on the grounds specified in section 42(1)(d) –

the agreement expires on the day on which the notice takes effect under section 43.

(5) If –

- (a) a notice to vacate in relation to premises, in respect of which there is a residential tenancy agreement for a fixed period, has been served under section 42 on the grounds specified in section 42(1)(d); and
- (b) that agreement, but for subsection (4), would have expired; and
- (c) the notice is withdrawn before it takes effect –

the residential tenancy agreement expires on the day on which the notice is withdrawn and a new residential tenancy agreement is established on that day.

(6) A residential tenancy agreement established under subsection (5) –

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- (a) is for a fixed period of 28 days commencing on the day on which the agreement is so established; and
- (b) is otherwise subject to the same terms and conditions of the residential tenancy agreement that existed before the notice to vacate was served.

12. Extension and renewal

- (1) A residential tenancy agreement may only be extended or renewed before it has expired.
- (2) A residential tenancy agreement for a fixed period may only be extended or renewed by agreement in writing of the owner and the tenant.

12A. Variation

A residential tenancy agreement may be varied by agreement of the owner and each tenant.

13. Written agreement

- (1) A written residential tenancy agreement is to be –
 - (a) easily legible; and
 - (b) clearly expressed; and
 - (c) if printed, in 10 points or more.

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- (2) The owner is to provide the tenant of residential premises to which a residential tenancy agreement relates with a copy of the agreement within 14 days after the agreement takes effect.

14. Information as to rights and obligations

An owner of residential premises is to give the tenant of the premises a copy of any information relating to rights and obligations under residential tenancy agreements as the Director of Consumer Affairs and Fair Trading may direct.

15. Inconsistent provisions

A provision of a residential tenancy agreement that is inconsistent with a provision of this Act has no effect.

16. Orders relating to inconsistency

- (1) Either party to a residential tenancy agreement may apply to the Court for an order determining whether or not a provision of the agreement is inconsistent with this Act.
- (2) The Court may –
 - (a) order that the provision be modified in a specified manner; or
 - (b) declare that the provision has no effect.
- (3) The fact that a provision of a residential tenancy agreement is declared to have no effect does not

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affect the right of occupancy conferred generally or specifically by the agreement.

Division 1A – Residential management agreements

16A. Residential management agreement

- (1) A residential management agreement exists where the owner of residential premises agrees in writing with a person that the person will perform the functions of that owner under this Act.
- (2) Subject to subsection (4), where a residential management agreement is in force –
 - (a) the residential manager is taken to be the owner of the premises for the purposes of this Act and is taken for the purposes of this Act to have the capacity to grant a right of occupancy of those premises to a person for value; and
 - (b) this Act does not apply to the owner of the premises in his or her capacity as owner.
- (3) Where a residential manager grants a right of occupancy of residential premises to a person, the person is a tenant for the purposes of this Act.
- (4) Where a residential manager dies, becomes insolvent or is unable to be located or, in the case of a company, is wound up, whilst a residential management agreement is in force,

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the residential manager is no longer taken to be the owner of the premises for the purposes of this Act.

Division 2 – Rent

16B. Rental properties to be advertised and offered at fixed rental price

- (1) The owner of residential premises –
 - (a) must not advertise the premises for rent, or offer the premises for rent, at a price that is not a fixed price; and
 - (b) must not invite a prospective tenant to make an offer to become a tenant of the premises at a price higher than a fixed price advertised or offered by the owner.

Penalty: Fine not exceeding 50 penalty units.

- (2) For the purposes of this section –
 - (a) rent specified in an advertisement, or offer, is not a fixed price for rent unless it is a definite single amount specified for the rent in the advertisement or offer; and
 - (b) rent specified in an advertisement, or offer, is not a fixed price for rent if the advertisement or offer is to the effect that the rent is to be determined in the future between the parties as –

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- (i) any amount within a range of prices for the rent mentioned in the advertisement or offer; or
- (ii) an amount that is to be above a minimum amount specified in the advertisement or offer.

17. Money other than rent

- (1) A person must not require or receive from a tenant or prospective tenant any money or other consideration for entering into, renewing, extending or continuing a residential tenancy agreement other than –
 - (a) rent in advance for the relevant payment period; and
 - (b) a security deposit; and
 - (c) a holding fee.

Penalty: Fine not exceeding 50 penalty units.

- (1A) Subsection (1) does not apply to a requirement to provide, or a receipt of, money or other consideration for the provision of any service, that is not the provision of accommodation, to an NDIS participant at accommodation which is SDA.
- (2) Except as provided otherwise in the regulations made under this Act, a person must not require or receive from another person any money or other consideration for or in relation to any of the following:

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- (a) making an application to rent residential premises;
- (b) providing keys for the inspection of residential premises;
- (c) giving permission to examine or inspect residential premises;
- (d) supplying details of residential premises available for rental;
- (e) placing the name of that other person on any waiting list for vacant residential premises;
- (f) any other prescribed activity.

Penalty: Fine not exceeding 50 penalty units.

- (3) An owner must not require or receive from a tenant during the term of a residential tenancy agreement any money or other consideration other than –
 - (a) rent in advance for the relevant payment period; and
 - (b) a water consumption charge if the residential premises are equipped with a device that calculates the amount of water used at those premises; and
 - (c) reasonable compensation for damage to the residential premises arising from the actions of the tenant or any loss incurred by the owner arising from the actions of the tenant.

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Penalty: Fine not exceeding 50 penalty units.

- (3A) A rent-collection agency must not require a person, who pays, or is to pay, to the agency rent in relation to residential premises, to pay a fee or charge in relation to the rent or receiving the rent.

Penalty: Fine not exceeding 50 penalty units.

- (4) In this section,

rent-collection agency means a person or body, other than an authorised deposit-taking institution, that receives, on behalf of an owner of residential premises to which a residential tenancy agreement relates, rent paid or payable in relation to the premises by or on behalf of a tenant;

water consumption charge means an amount levied on an owner by a regulated entity, within the meaning of the *Water and Sewerage Industry Act 2008*, for water consumed by an occupant of residential premises that is calculated as a fee for each unit of water consumed.

18. Rent payable in advance

Rent is payable in advance for a payment period.

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19. Payment period

- (1) The payment period must not be varied during the period of the residential tenancy agreement unless the owner and tenant agree.
- (2) A payment period must not exceed –
 - (a) 2 weeks in the case of boarding premises; or
 - (b) 4 weeks in any other case.

20. Increase in rent

- (1) An owner, by written notice to the tenant, may increase the amount of the rent payable by the tenant in respect of residential premises if –
 - (a) the written residential tenancy agreement for those premises allows for an increase; or
 - (b) there is no written residential tenancy agreement for those premises.
- (2) A notice is to specify –
 - (a) the amount of the rent as increased; and
 - (b) the day from which the increase in the rent takes effect.
- (3) Except in the case of a residential tenancy agreement that relates to social housing, an increase in rent may only take effect from a day

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that is more than 60 days after the day on which the notice is given and is a day that is –

- (a) not less than 12 months after the residential tenancy agreement commenced or was extended or renewed; or
 - (b)
 - (c) if rent has been previously increased, more than 12 months after the last increase; or
 - (d) if the Commissioner makes an order under section 23(3), more than 12 months after the date of that order.
- (3A) If a residential tenancy agreement relates to social housing, an increase in rent may only take effect from a day that is more than 60 days after the day on which the notice is given.
- (4) A notice operates to vary the residential tenancy agreement to the effect that the increased rent as specified in the notice is payable under the agreement from the day specified in the notice.
- (5) For the avoidance of doubt, it is stated that if –
- (a) a social housing provider or housing support provider is providing rent assistance to, or in relation to, an eligible person; and
 - (b) the social housing provider or housing support provider reduces the amount or

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amounts he or she is paying so as to cause the eligible person to pay a higher contribution towards the rent in respect of which he or she is or was receiving rent assistance –

the reduction of the amount or amounts that the social housing provider or housing support provider is paying does not constitute an increase in rent.

21. Receipt for rent paid

On receiving rent in cash or by cheque from a tenant, an owner is to give the tenant a receipt stating –

- (a) the date on which it was received; and
- (b) the name of the tenant; and
- (c) the residential premises in respect of which the rent is paid; and
- (d) the amount of rent paid; and
- (e) the period to which the payment relates.

22. Postdated cheques

An owner is not to require a cheque or other negotiable instrument that is postdated in payment for rent.

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23. Unreasonable increase

- (1) A tenant may apply to the Commissioner for an order declaring that an increase in the rent payable under a residential tenancy agreement is unreasonable.
- (1A) An application made under subsection (1) is to be accompanied by the prescribed fee.
- (1B) An application may only be made under subsection (1) by a tenant within the period of 60 days after the tenant is notified of the increase under section 20.
- (1C) The Commissioner may, if he or she thinks fit, conduct a hearing in relation to an application for an order under this section.
- (2) In determining whether an increase in the rent is unreasonable, the Commissioner is to have regard to –
 - (a) the general level of rents for comparable residential premises in the locality or a similar locality; and
 - (b) any other relevant matter.
- (3) If satisfied that the increase in the rent is unreasonable, the Commissioner may order that the increase in the rent be changed to an amount that does not exceed a specified amount.
- (4) Subject to subsection (7)(a) and any contrary order of a court, an order of the Commissioner under this section remains in force until the day

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on which rent may be increased under section 20.

- (5) If the Commissioner has determined an application made under subsection (1) in respect of premises, a tenant or an owner in respect of the premises may apply to the Court to determine whether the increase in the rent, payable under the residential tenancy agreement in respect of the premises before the Commissioner determined the application, is unreasonable.
- (6) An application may only be made under subsection (5) by a tenant or owner in respect of premises within the period of 60 days after the tenant or owner is notified that the Commissioner has determined an application made under subsection (1) in respect of the premises.
- (7) If an application is made under subsection (5) in respect of premises –
 - (a) any order made by the Commissioner under this section in relation to the premises is of no effect, unless the application is withdrawn; and
 - (b) the Court is to determine the application as if –
 - (i) the Commissioner had not determined an application made under subsection (1) in respect of the premises; and

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- (ii) a reference in subsection (2), (3) or (4) to the Commissioner were a reference to the Court.

24. Distress for rent prohibited

- (1) A person must not levy or make distress for any amount due that is unpaid.

Penalty: Fine not exceeding 50 penalty units.

- (2) In addition to any penalty imposed on a person for an offence under subsection (1), the person –
 - (a) is liable to pay any costs incurred by any other person as a result of that offence; and
 - (b) must return any goods seized to the owner of the goods or, if the goods cannot be returned, pay the owner the value of the goods.

24A. Repayment of rent arrears accrued during period relating to COVID-19

- (1) A tenant who is in arrears of rent payable in respect of residential premises during the emergency period or a subsequent COVID-19 emergency period may apply to the Commissioner for a rent arrears payment order in relation to the arrears of rent.
- (2) An application under subsection (1) is to be in the approved form.

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- (3) The Commissioner, as soon as practicable after receiving an application under subsection (1) in relation to premises, is to notify the owner of the premises.
- (4) The Commissioner may make an order (a ***rent arrears payment order***) in relation to a tenant from whom the Commissioner has received an application under subsection (1), if the Commissioner is satisfied that the tenant –
 - (a) is in arrears of rent that was payable during the emergency period or a subsequent COVID-19 emergency period; and
 - (b) has experienced financial hardship as a result of the economic effects of the socially-dislocating disease; and
 - (c) has the financial capacity to comply with the order.
- (5) A rent arrears payment order is to specify –
 - (a) the total amount, of rent that is in arrears, to which the order relates; and
 - (b) a schedule setting out parts of the total amount and the periods within which each such part of the total amount is to be paid; and
 - (c) any conditions to which the order is subject; and

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- (d) that, unless an appeal is made under this section, the order takes effect on the day after the end of the 7-day period beginning on the day after the day on which notice of the order was given under subsection (6).
- (6) The Commissioner, within 3 days of making a rent arrears payment order under subsection (4) in relation to a tenant, is to notify the tenant, and the owner of the premises to which the order relates, of the making of the order.

24B. Appeal against order under section 24A

- (1) An owner or tenant in relation to residential premises who is aggrieved by an order made by the Commissioner under section 24A(4) may appeal to the Court within the 7-day period beginning on the day after the day on which notice of the order was given under section 24A(6).
- (2) An appeal is to be heard as a minor civil claim under the *Magistrates Court (Civil Division) Act 1992* and, subject to this section, is to be instituted, heard and determined as prescribed.
- (3) An appeal is to be by way of rehearing.
- (4) On the hearing of an appeal, the Court may –
 - (a) confirm the order of the Commissioner under section 24A(4) with the amendments, if any, that the Court thinks fit, and direct that the order of the

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Commissioner is to take effect from a specified date; or

- (b) set aside the order of the Commissioner.

Division 3 – Security deposits and holding fees

25. Security deposits

- (1) Except in the case of boarding premises, an owner may require that an amount be paid by or on behalf of the prospective tenant as security for the performance of obligations under a residential tenancy agreement.
- (1A) If a residential tenancy agreement relates to SDA and the prospective tenant is an NDIS participant, a security for the performance of obligations under the agreement may relate only to that part of the residential premises in respect of which the prospective tenant has the right of exclusive occupation.
- (2) A person paying a security deposit under subsection (1) must pay the deposit –
- (a) to the Authority; or
- (b) if the residential premises are managed on the owner’s behalf by a property agent, within the meaning of the *Property Agents and Land Transactions Act 2016*, to the Authority or that property agent; or

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- (c) if the residential premises are social housing, to the Authority or the social housing provider; or
- (d) if a council is the owner of the residential premises, to the Authority or the council.

Penalty: Fine not exceeding 50 penalty units.

- (2A) If the owner of residential premises under a residential tenancy agreement is a social housing provider or a council and agrees to it, a security deposit may be paid in instalments as agreed between the owner and prospective tenant.
- (3) A property agent who receives a security deposit from a tenant under subsection (2)(b) must deposit that money with the Authority within 10 working days after receiving it.

Penalty: Fine not exceeding 50 penalty units.

- (3A) A social housing provider or council who receives a security deposit in full from or on behalf of a tenant must deposit that money with the Authority within 10 working days after receiving it.
- (3B) A social housing provider or council who receives a security deposit in instalments from or on behalf of a tenant –
 - (a) may keep all instalments received until the final instalment is paid; and

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- (b) must deposit all money so received with the Authority within 10 working days after receiving the final instalment.
- (3C) Despite subsection (3B)(a), if the social housing provider or council makes a claim, or is notified that a claim has been made, to the Authority for the disbursement of the security deposit, the social housing provider or council is to deposit with the Authority, as soon as reasonably practicable, all money paid to the social housing provider or council in instalments towards payment of the security deposit.
- (3D) A person who pays or deposits a security deposit, or deposits an instalment towards a security deposit, with the Authority is to include with the payment or deposit the form specified in section 27(a).
- (4) An owner must not –
 - (a) receive a security deposit from or on behalf of a tenant in relation to a residential tenancy agreement; or
 - (b) require more than one security deposit to be paid in relation to the same residential tenancy agreement; or
 - (c) require an amount to be paid as a security deposit that exceeds 4 weeks' rent payable under the residential tenancy agreement.

Penalty: Fine not exceeding 50 penalty units.

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- (5) If a court finds a property agent or an owner guilty of contravening subsection (3) or (4)(a), the court, instead of or in addition to any penalty it may impose in respect of that contravention, may order the property agent or owner to pay an amount received as a security deposit to the Authority within 3 working days.

26. Condition report

- (1) If an owner requires an amount as a security deposit in respect of any residential premises to be paid by or on behalf of a prospective tenant, the owner is to give the tenant 2 copies of a report stating the condition of the premises on or before the day on which the tenant occupies the premises.
- (2) A condition report is to –
- (a) specify the general state of repair and condition of the premises to which it relates; and
 - (b) be signed by the owner.
- (3) On receipt of the copies of the condition report the tenant is to –
- (a) sign one of the copies of the report endorsed with a statement that the tenant agrees or disagrees with the report as a whole or any part of it; and
 - (b) return that signed and endorsed copy to the owner within 2 days.

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- (4) A condition report that is given under this section is evidence of the state of repair and condition of the residential premises to which it relates.

27. Forms relating to security deposit

The following forms are to be in a form approved by the Director of Consumer Affairs and Fair Trading:

- (a) a form to lodge a security deposit with the Authority;
- (b) a form to claim the disbursement of a security deposit.

28. Provision of claim form, &c., on termination of tenancy

On termination of a residential tenancy agreement, the owner must –

- (a) give to the tenant, not more than 3 working days after the termination of the residential tenancy agreement, a claim form signed by the owner; and
- (b) if the claim form specifies that it is considered that the owner is entitled to a disbursement, give to the tenant a notice that states the reasons why.

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29. Claims for disbursement of security deposit generally

Following the termination of a residential tenancy agreement, the following persons are entitled to make a claim to the Authority for the disbursement of a security deposit in accordance with this Act:

- (a) the tenant under section 29A or 29B;
- (b) the owner under section 29A or 29C;
- (c) the deposit contributor under section 29A or 29D.

29A. Claim where all parties agree

- (1) If the owner, all tenants and all deposit contributors agree with the claim form and endorse the claim form to that effect, any of those persons may lodge the claim form with the Authority.
- (2) On receipt of a claim form lodged under subsection (1), the Authority is to –
 - (a) disburse to the owner from the security deposit the amount specified in the claim form or later determined; and
 - (b) disburse the remainder of the security deposit, if any, to the tenants and the deposit contributors in accordance with section 29E.

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29B. Claim by tenant

- (1) The tenant may lodge with the Authority a claim form following the end of a residential tenancy agreement if –
 - (a) the tenant has received the claim form from the owner under section 28 and has endorsed it with his or her agreement; or
 - (b) the owner has failed to so provide a claim form.
- (2) On receipt of a claim form under subsection (1), the Authority is to take all reasonable steps to provide notice of receipt of the claim form to each owner, tenant and deposit contributor who has not endorsed the claim form with his or her agreement to it.
- (3) If no dispute is lodged under section 29F, the Authority is to –
 - (a) disburse to the owner from the security deposit any amount specified in the claim form or later determined; and
 - (b) disburse the remainder of the security deposit, if any, to the tenants and the deposit contributors in accordance with section 29E.

29C. Claim by owner

- (1) The owner may lodge a claim form with the Authority –

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- (a) if –
 - (i) the owner has given a claim form to a tenant under section 28; and
 - (ii) the tenant has not lodged that form with the Authority within 10 days after it was so given or a longer prescribed period; and
 - (iii) the deposit contributor has not lodged a claim form with the Authority; or
 - (b) if –
 - (i) the owner has been unable to give the claim form to any tenant under section 28 after taking all reasonable steps to do so; and
 - (ii) the deposit contributor has not lodged a claim form with the Authority.
- (2) On receipt of a claim form under subsection (1) –
- (a) the Authority is to refer the matter to the Commissioner; and
 - (b) the referral is taken to be a dispute lodged under section 29F and this Act applies to the referral with such modifications as are necessary for that purpose.

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29D. Claim by deposit contributor

- (1) A deposit contributor may lodge a claim form with the Authority if –
 - (a) the contributor is aware that the residential tenancy agreement has been terminated; and
 - (b) the tenant has not lodged a claim form with the Authority within 10 days after it was given to him or her by the owner or a longer prescribed period; and
 - (c) the owner has not lodged a claim form with the Authority.
- (2) On receipt of a claim form under subsection (1), the Authority is to take all reasonable steps to provide notice of receipt of the claim form to each owner, tenant and other deposit contributor.
- (3) If no dispute is lodged under section 29F, the Authority is to –
 - (a) disburse to the owner from the security deposit the amount specified in the claim form or later determined; and
 - (b) disburse the remainder of the security deposit, if any, to the tenants and the deposit contributors in accordance with section 29E.

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29DA. Referral by Authority to Commissioner

The Authority may refer to the Commissioner any claim lodged under section 29B, 29C or 29D.

29E. Disbursements of security deposits

(1) In this section –

deposit contributor's portion means the amount that would be paid to a deposit contributor under subsection (2)(b) if no disbursement were to be made to the owner;

tenant's portion means the amount that would be paid to a tenant under subsection (2)(a) if no disbursement were to be made to the owner.

(2) If no part of a security deposit is to be disbursed to the owner –

(a) that part of the security deposit paid to the Authority by the tenant is to be disbursed to the tenant; and

(b) that part of the security deposit paid to the Authority by a deposit contributor is to be disbursed to the deposit contributor.

(3) In a case where any part of the security deposit is to be disbursed to the owner –

(a) the Authority –

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- (i) is to subtract the amount to be disbursed to the owner firstly from the tenant's portion; and
 - (ii) if there is insufficient money in the tenant's portion to fully meet that disbursement, is to then subtract from the deposit contributor's portion any part of that disbursement that has not been met from the tenant's portion; and
 - (b) if there is money remaining in either the tenant's portion or deposit contributor's portion after meeting the disbursement to the owner as specified in paragraph (a), the Authority is to pay that remainder to the tenant or contributor, as appropriate.
- (4) The Authority must not disburse the security deposit after a dispute is lodged under section 29F until –
- (a) if an appeal is instituted under section 30, that appeal is decided; or
 - (b) if no appeal is instituted under that section, the period allowed for instituting the appeal has elapsed.
- (5) Interest earned with respect to any security deposit held by the Authority is the property of the Authority and is not payable as a disbursement to any tenant, deposit contributor or owner.

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29F. Lodging disputes

- (1) A tenant may dispute a claim form by lodging with the Commissioner a dispute –
 - (a) if the tenant has received a claim form from the owner, at any time before a relevant claim form is lodged with the Authority; or
 - (b) in all other cases, within 10 days after the lodgment of a relevant claim form with the Authority.
- (2) A deposit contributor or owner may dispute a claim form by lodging with the Commissioner a dispute within 10 days after the lodgment of a relevant claim form with the Authority.
- (3) A dispute is to –
 - (a) be in writing; and
 - (b) include or be accompanied by any information to support the dispute; and
 - (c) be accompanied by the prescribed fee.
- (4) The Commissioner may accept the lodgment of a dispute after the period specified in subsection (1) or (2) has expired at his or her discretion but only if –
 - (a) the Authority has not already made a disbursement of the security deposit; or
 - (b) the security deposit has not been forfeited to the Authority.

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- (5) If a matter in respect of a claim form is referred to the Commissioner by the Authority under section 29C(2), the owner who lodged the claim form is required to pay the fee prescribed under subsection (3)(c) as if he or she had lodged the dispute.
- (6) On receipt of a dispute, the Commissioner –
 - (a) is to notify, in writing, the Authority of the dispute within 24 hours after it is lodged; and
 - (b) is to take all reasonable steps to notify, in writing, each tenant, deposit contributor and owner who is known to the Commissioner of the lodging of the dispute and their right to make written submissions in respect of the dispute within the time specified in the notice; and
 - (c) may require the Authority and any such tenant, deposit contributor and owner to provide the Commissioner with information and documentation relevant to the dispute.
- (7) The Authority, a tenant, a deposit contributor or an owner must comply with a requirement made under subsection (6)(c).
- (8) If a tenant, deposit contributor or owner fails to comply with a requirement made under subsection (6)(c), he, she or it is guilty of an offence and is liable on conviction to a fine not exceeding 10 penalty units.

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- (9) Each owner, tenant and deposit contributor in respect of a residential tenancy agreement is a party to a dispute relating to the claim form in respect of the termination of that agreement.
- (10) A party other than the person who lodged the dispute may provide written submissions and other documents to the Commissioner in respect of the dispute on payment of the prescribed fee.
- (11) The Commissioner may waive the whole or any part of a fee payable under this section.

29G. Determining disputes

- (1) The Commissioner may not determine a dispute until at least 7 days have passed since the last of the notices that he or she is required to provide under section 29F(6)(a) and (b) has been so provided.
- (2) The Commissioner is to determine a dispute by determining the amount, if any, of the security deposit that is to be disbursed to the owner.
- (3) On determining a dispute, the Commissioner is to give to the Authority and each party known to the Commissioner written notice of the determination.
- (4) The Commissioner may refund to any person the whole or any part of any fee paid under section 29F if the Commissioner considers that another party to the dispute has acted vexatiously in lodging the dispute, submissions or other information under that section.

30. Appeal against determination

- (1) A person may appeal to the Court against the determination of the Commissioner under section 29G.
- (2) An appeal is to be instituted within 7 days after the last of the parties to the dispute has been given notice of the Commissioner's determination under section 29G.
- (3) The Court is to hold a new hearing in deciding the appeal.
- (4) In deciding the appeal, the Court may –
 - (a) confirm the determination of the Commissioner; or
 - (b) vary the determination and order the security deposit to be disbursed in accordance with the determination as varied and section 29E.
- (5) On deciding an appeal, the Court is to notify the Authority, in writing, of its decision.

30A. Unclaimed security deposit forfeited

- (1) In this section –

expired period determination means a determination made under subsection (2);

forfeit determination means a determination made under subsection (3).

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- (2) The Authority may determine in relation to a security deposit or part of a security deposit held by it that at least 6 years have elapsed since the end of the residential tenancy agreement.
- (3) In accordance with this section and after making an expired period determination, the Authority may further determine that the security deposit or the part of a security deposit held by it is forfeited to the Authority.
- (4) If no claim form has been lodged with the Authority, it may make a forfeit determination in respect of a security deposit held by it any time after the expired period determination is made.
- (5) If a claim form has been lodged with the Authority –
 - (a) in a case where a disbursement has been made from the security deposit before the expired period determination is made, the Authority may make a forfeit determination in respect of that part of the security deposit held by it any time after the expired period determination is made; or
 - (b) in any other case, the Authority may make a forfeit determination in respect of that part of the security deposit held by it after all disbursements resulting from that claim are made in accordance with this Act.
- (6) On the making of a forfeit determination, the security deposit, or that part of a security

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deposit, in respect of which that determination is made is forfeited to and becomes the property of the Authority.

31. Holding agreement and fees

- (1) The owner of residential premises that are unoccupied and a prospective tenant may enter into an agreement to hold the premises for the future occupancy of the prospective tenant for a specified period exceeding 7 days.
- (2) The holding agreement may impose a fee payable by the prospective tenant as a condition of the holding agreement.

Division 4 – Repairs

31A. Reference in this Division to repair may include reference to replacement

- (1) If an object that is an essential service and that is required to be repaired under this Division is unable to be repaired, the object is required under this Division to be replaced with an object that –
 - (a) serves the same primary function as the object required to be replaced; and
 - (b) serves that function to a reasonably similar degree or standard as the degree or standard of the object before it was required to be repaired –

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and, accordingly, a reference in this Division to repair is to be taken in such circumstances to be a reference to replacement.

- (2) If an object that is an essential service and that is required to be repaired under this Division is able to be repaired, but it would be cheaper, easier or quicker to replace the object instead, the object may be replaced with an object that –
 - (a) serves the same primary function as the object required to be replaced; and
 - (b) serves that function to a reasonably similar degree or standard as the degree or standard of the object before it was required to be repaired –

and, accordingly, a reference in this Division to repair is to be taken in such circumstances to include a reference to replacement.

32. General repairs and maintenance

- (1) Without limiting the application of Part 3B, the owner of residential premises is to maintain the premises as nearly as possible in the condition, apart from reasonable wear and tear, that existed on the day on which the residential tenancy agreement was entered into.
- (2) The tenant is to notify the owner of any repairs needed in respect of the premises within 7 days of the need arising.

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- (3) The owner is to carry out any repairs specified in the notice that do not arise from any fault of the tenant –
- (a) in the case of boarding premises, within 7 days; or
 - (ab) if the repair is to a heating element of a cooking stove, within 14 days; or
 - (b) in any other case, within 28 days –
- after receipt of the notice.
- (4) This section –
- (a) does not apply during the emergency period, unless a period is determined under subsection (5)(a) during the emergency period, in which case this section does not apply during the period so determined; or
 - (b) does not apply during a subsequent COVID-19 emergency period, unless a period is determined under subsection (5)(b) during the subsequent COVID-19 emergency period, in which case this section does not apply during the period so determined.
- (5) The Commissioner, by notice in the *Gazette*, may, for the purposes of subsection (4), determine –

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- (a) a period, specified in the notice, that ends before the end of the emergency period;
or
- (b) a period, specified in the notice, that ends before the end of a subsequent COVID-19 emergency period.

33. Urgent repairs

- (1) If an essential service ceases to function –
 - (a) the tenant is to notify the owner as soon as practicable of the need for urgent repair; and
 - (b) the owner is to carry out the necessary repairs, or otherwise cause the essential service to be restored, as soon as practicable after that notification.
- (2) If the owner is unable to be contacted or fails to arrange for the carrying out of any urgent repair that does not arise from any fault of the tenant within 24 hours after being notified, the tenant may authorise one of the following to carry out the repair:
 - (a) a nominated repairer; or
 - (b) if there is not a nominated repairer, a suitable repairer.
- (3) Any repairs under subsection (2) are to be carried out only to the extent that the essential service becomes functional.

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- (4) The costs of any repairs carried out under subsection (2) are to be paid by –
- (a) the owner, if carried out by a nominated repairer; or
 - (b) the tenant, if carried out by a suitable repairer.
- (4A) If the owner arranges for the carrying out of any urgent repair within 24 hours after being notified, the owner is to ensure that the repair is carried out as soon as practicable.
- (5) Subsections (2), (3) and (4) do not apply to boarding premises.
- (6) In this section, an essential service is to be taken to be functional –
- (a) where the service is a water service or a sewerage service, if at least the amount of water or sewage that would be supplied or removed, respectively, from the premises, if the service were fully functional, is capable of being safely so supplied or removed; and
 - (b) where the service is an electricity service, if –
 - (i) all power points, or wires between the walls of the premises or in the ceiling of the premises are safe and, except in relation to those power points or wires indicated in the condition report

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prepared at the beginning of the tenancy as not being functioning power points or functioning wires, supply electricity to the premises; and

- (ii) where the service consists of an electricity-generating device – the device safely produces and supplies electricity to at least the level that such a device of the same capacity ought reasonably be expected to produce and supply; and
- (c) where the service is a heating service, if the service safely provides heat to the level that it was reasonably capable of providing when it was manufactured; and
- (d) where the service is a cooking stove, if at least half of the heating elements of the stove, and the oven, function safely; and
- (e) where the service is a hot-water service, if the service safely provides at least the same amount of hot water, and water at the same temperature, as the service provided when it was manufactured; and
- (f) where the service is a service that is within the meaning of paragraph (c) of the definition of *essential service* in section 3, if all water on the premises required to be removed or treated is able to be safely removed, or safely treated,

within the period that such a service would be able to remove or treat the water if the service were fully functioning.

- (7) An essential service ceases to function if the service is not, under subsection (6), taken to be functional.

34. Emergency repairs

- (1) If damage occurs to residential premises –
- (a) the tenant is to notify the owner as soon as practicable of the need to repair the damage; and
 - (b) the owner is to discharge his or her obligations under section 32(1) as soon as practicable.
- (2) If the owner is unable to be contacted or fails to arrange for the carrying out of any repairs and the damage is likely to result in further damage to, or deterioration of, the premises, the tenant may authorise one of the following to repair the damage:
- (a) a nominated repairer;
 - (b) if there is not a nominated repairer, a suitable repairer.
- (3) Any repairs under subsection (2) are to be carried out only to the extent that is required to prevent further damage or deterioration of the premises.

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- (4) The costs of repairs carried out under subsection (2) are to be paid by –
 - (a) the owner, if carried out by a nominated repairer; or
 - (b) the tenant, if carried out by a suitable repairer.
- (4A) If the owner arranges for the carrying out of any emergency repair after being notified of the need for repair, the owner is to ensure that the repair is carried out as soon as practicable.
- (5) Subsections (2), (3) and (4) do not apply to boarding premises.

35. Reimbursement of cost of repairs

- (1) If a suitable repairer carried out repairs under section 33 or 34, the tenant is to give the owner the following documents:
 - (a) a statement from the repairer as to the apparent cause of the need for repair;
 - (b) a copy of the statement of account;
 - (c) a receipt of payment of the account.
- (2) The owner is to reimburse the tenant with the amount of the payment made by the tenant within 14 days after receiving the documents unless the owner makes an application under section 36.

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- (3) This section does not apply to boarding premises.

36. Disputing liability to reimburse

- (1) If the owner disputes the liability to reimburse the tenant for repairs carried out under section 33 or 34 the owner may apply to the Court to determine the liability.
- (2) An application is to be made within 14 days after receiving the documents under section 35.
- (3) The only grounds on which liability may be disputed are as follows:
- (a) that the owner was not notified of the need for repair;
 - (b) that the need for repair arose as a result of –
 - (i) the fault of the tenant; or
 - (ii) a non-compliance of a provision of the residential tenancy agreement;
 - (c) that the tenant gave an authorisation to carry out repairs within the 24 hour period referred to in section 33(2) and the repairs were carried out in that period.
- (4) The Court may order that the owner –

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- (a) reimburse the tenant for the full amount or part of the amount as the Court considers appropriate; or
 - (b) is not liable to reimburse the tenant for any of the amount.
- (5) This section does not apply to boarding premises.

36A. Order for repairs

- (1) A tenant may apply to the Commissioner for an order that repairs under this Division that the owner is required under this Division to carry out, or to arrange for the carrying out of, are carried out.
- (2) An application is to be accompanied by the prescribed fee.
- (3) The Commissioner may, if he or she thinks fit, conduct a hearing in relation to an application for an order under this section.
- (4) The Commissioner may order an owner to ensure that reasonable repairs in relation to premises (including repairs of essential services) are carried out, if satisfied that –
 - (a) the owner is required under this Division to carry out, or to arrange for the carrying out of, the repairs; and
 - (b) the repairs are reasonable; and

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- (c) the repairs are not required because of any fault of the tenant.
- (5) If the Commissioner has determined an application made under subsection (1) in respect of premises, the owner or a tenant in respect of the premises may apply to the Court for a determination as to whether the owner is required under this Division to carry out, or to arrange for the carrying out of, repairs under this Division.
- (6) An application may only be made under subsection (5) by a tenant or owner within the period of 60 days after the tenant or owner is notified of the determination of the Commissioner in respect of the matter to which the application relates.
- (7) If an application is made under subsection (5) in respect of premises –
 - (a) any order made by the Commissioner under this section in relation to the premises is of no effect, unless the application is withdrawn; and
 - (b) the Court is to determine the application as if the Commissioner had not made a determination under this section in relation to the matter to which the application relates and as if a reference in subsection (4) to the Commissioner were a reference to the Court.

PART 3A – SMOKE ALARMS

36B. Interpretation of Part 3A

In this Part –

smoke alarm means a device that is designed to emit a loud warning sound when it detects the presence of smoke;

tenanted premises means premises to which a residential tenancy agreement relates.

36C. Smoke alarms

(1) In this section –

relevant period, in relation to tenanted premises, means the period –

- (a) beginning on the day on which a tenant first takes possession of the premises under the residential tenancy agreement in relation to the premises; and
 - (b) ending on the day on which all tenants under that agreement cease to be in possession of the premises under the agreement.
- (2) An owner of tenanted premises must ensure that smoke alarms are, during the relevant period, in place on the premises in accordance with the requirements, if any, prescribed in regulations

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for the purposes of this section in relation to such premises.

Penalty: Fine not exceeding 50 penalty units.

- (3) The requirements that may be prescribed in regulations for the purposes of this section include, but are not limited to including, requirements of the following kind:
- (a) the class or classes of tenanted premises in relation to which smoke alarms are required to be in place;
 - (b) the type or types of smoke alarms that are required to be in place in relation to such a class or classes of premises;
 - (c) any standards or codes with which such smoke alarms are to comply;
 - (d) where on such premises such smoke alarms are required to be in place.

36D. Maintenance, &c., of smoke alarms

- (1) An owner of tenanted premises must not, without reasonable excuse, fail to comply, in relation to a smoke alarm that –
- (a) is required under section 36C to be in place on such premises; and
 - (b) is installed in the premises –

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with the requirements prescribed, in regulations for the purposes of this subsection, in relation to owners of tenanted premises.

Penalty: Fine not exceeding 10 penalty units.

- (2) A tenant of tenanted premises must not, without reasonable excuse, fail to comply, in relation to a smoke alarm that –
- (a) is required under section 36C to be in place on such premises; and
 - (b) is installed in the premises –

with the requirements prescribed, in regulations for the purposes of this subsection, in relation to tenants of tenanted premises.

Penalty: Fine not exceeding 10 penalty units.

- (3) The regulations may prescribe for the purposes of subsections (1) and (2) requirements, in respect of owners and tenants, respectively, of tenanted premises, in relation to the following:
- (a) the maintenance, cleaning and testing of smoke alarms required under section 36C to be in place on tenanted premises and installed on such premises;
 - (b) the replacement or repair of such smoke alarms;
 - (c) the replacement of batteries used to power such smoke alarms;

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- (d) the giving of notice to an owner of premises to which section 36C relates that a smoke alarm on the premises has ceased to function properly or at all.

36E. Defences in relation to sections 36C and 36D

- (1) It is a defence to a charge of committing an offence against a provision of section 36C or section 36D that another person to whom that provision applied had satisfied the requirements of that provision.
- (2) It is not a defence to a charge of committing an offence against a provision of section 36C or section 36D that another person to whom that provision applied had failed to satisfy the requirements of that provision.

36F. Removal of, or interference with, smoke alarms

- (1) A person must not remove, or interfere with the operation of, a smoke alarm that is in place on premises as required under section 36C.

Penalty: Fine not exceeding 20 penalty units.

- (2) It is a defence to a charge of committing an offence against subsection (1) if the person charged proves that –
 - (a) the smoke alarm was removed so as to enable the repair or maintenance of the smoke alarm; and

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- (b) the smoke alarm was removed for no longer than was reasonably necessary to enable the repair or maintenance.
- (3) It is a defence to a charge of committing an offence against subsection (1) in relation to premises if the person charged proves that –
 - (a) the smoke alarm was removed so as to enable the replacement of the smoke alarm; and
 - (b) the smoke alarm was, as soon as practicable after being removed, replaced by another smoke alarm that complies with the requirements, prescribed for the purposes of section 36C, that apply in relation to the premises.
- (4) A person must not wilfully cause to malfunction, or to cease to operate effectively, a smoke alarm that is in place on premises as required under section 36C.

Penalty: Fine not exceeding 40 penalty units.

36G. Right to install smoke alarms in strata title units

- (1) In this section –

body corporate has the same meaning as it has in the *Strata Titles Act 1998*;

lot has the same meaning as it has in the *Strata Titles Act 1998*.

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- (2) Nothing in the *Strata Titles Act 1998*, any regulations made under that Act, or any rules made by a body corporate under that Act, is to be taken to prevent any of the following occurring, or to require the permission of the body corporate in relation to a lot to be given before any of the following may occur:
- (a) the installation, repair or maintenance of any smoke alarms that are required under section 36C to be in place on premises;
 - (b) any works, including but not limited to works consisting of or associated with the installation, repair or maintenance of electrical wiring, that are necessary to enable the installation or operation of any smoke alarms that are required under section 36C to be in place on premises;
 - (c) the installation, repair or maintenance of any object, including but not limited to electrical wiring, that is necessary to enable the installation or operation of any smoke alarms that are required under section 36C to be in place on premises.

36H. Power of Commissioner to order compliance with this Part

- (1) The Commissioner may make an order requiring a party to a residential tenancy agreement to comply with a provision of this Part.
- (2) An order made under subsection (1) may be enforced in the same manner as an order made

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by a magistrate under the *Magistrates Court (Civil Division) Act 1992*.

PART 3B – MINIMUM STANDARDS FOR PREMISES

36I. Premises to be weatherproof and structurally sound

- (1) An owner must ensure that premises to which a residential tenancy agreement relates –
- (a) are weatherproof; and
 - (b) are in a proper state of structural repair.

Penalty: Fine not exceeding 50 penalty units.

- (2) For the purpose of subsection (1), premises are in a proper state of structural repair only if the roof, floors, ceilings, walls and stairs –
- (a) are in good repair; and
 - (b) are not subject to significant dampness; and
 - (c) are not liable to collapse because they are rotted or otherwise defective.

36J. Cleanliness and good repair

- (1) An owner must not enter into a residential tenancy agreement in relation to premises unless the premises are clean.

Penalty: Fine not exceeding 50 penalty units.

- (2) An owner must not enter into, extend, or renew, a residential tenancy agreement in relation to premises unless the premises are in good repair.

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Penalty: Fine not exceeding 50 penalty units.

- (3) An owner of premises to which a residential tenancy agreement relates must, as soon as practicable after he or she becomes aware that the premises have ceased to be in good repair, take all reasonable steps to return the premises to good repair, except if the premises have ceased to be in good repair through the fault of a tenant.

Penalty: Fine not exceeding 50 penalty units.

36K. Bathrooms and toilets to be provided

- (1) An owner must not enter into, extend, or renew, a residential tenancy agreement in relation to premises unless –
- (a) there is, in or on the premises, a flushable toilet that is –
- (i) connected to a sewer, an on-site wastewater management system (including a septic system), or any other system, approved by the council for the municipal area in which the premises are situated, for treatment or disposal of waste; and
- (ii) contained in a room that is intended to be used solely for the purposes of toilet use or as a bathroom; and

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- (b) the room that contains the toilet contains –
 - (i) a vent or opening window; or
 - (ii) a functioning device that enables the room to be mechanically ventilated.

Penalty: Fine not exceeding 50 penalty units.

- (2) An owner must not enter into, extend, or renew, a residential tenancy agreement in relation to premises unless –
 - (a) there is situated on the premises a bathroom (which may contain a toilet) that is in a separate room; and
 - (b) the bathroom is designed to permit a person to use it in private; and
 - (c) the bathroom contains a bath or a shower (and may contain both); and
 - (d) the bathroom contains a washbasin; and
 - (e) any washbasin, bath or shower in the bathroom is connected to a water system enabling a continuous supply of a reasonable amount of hot and cold water to be provided to the washbasin, bath or shower.

Penalty: Fine not exceeding 50 penalty units.

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36L. Cooking facilities

An owner must not enter into, extend, or renew, a residential tenancy agreement in relation to premises unless there is situated in the premises an area, intended to be used for cooking, that includes –

- (a) a functioning kitchen sink that is connected to a water system enabling a continuous supply of hot and cold water to be provided to the sink; and
- (b) a stovetop with –
 - (i) at least 2 functioning heating elements, if the premises has 2 or fewer bedrooms; or
 - (ii) at least 3 functioning heating elements, if the premises has 3 or more bedrooms; and
- (c) a functioning oven, which may be a conventional oven, convection oven or microwave oven or a combination of any such ovens; and
- (d) any other object, for the purposes of use in a kitchen, that is prescribed.

Penalty: Fine not exceeding 50 penalty units.

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36M. Electricity and heating

- (1) An owner must not enter into, extend, or renew, a residential tenancy agreement in relation to premises unless the premises are connected to –
 - (a) a mains electricity supply (whether or not an electricity provider is supplying electricity to the premises on the day the agreement is entered into, extended or renewed); or
 - (b) a functioning device that is –
 - (i) capable of producing and supplying to the premises a supply of electricity that is sufficient to provide for the electricity needs of the number of persons that the premises is designed to accommodate; and
 - (ii) connected to the electrical wiring system in the premises.

Penalty: Fine not exceeding 50 penalty units.

- (2) An owner must not enter into, extend, or renew, a residential tenancy agreement in relation to premises unless –
 - (a) all power points, or wires between the walls of the premises or in the ceiling of the premises are safe and, except for the power points or wires indicated in the condition report prepared at the beginning of the tenancy as not being

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functioning power points or functioning wires, supply electricity to the premises; and

- (b) every room used, or intended for use, by a tenant, other than a room that is intended only for storage or for use as a garage, has adequate natural or artificial lighting.

Penalty: Fine not exceeding 50 penalty units.

- (3) An owner must not enter into, extend, or renew, a residential tenancy agreement in relation to premises unless there is, in a room that may be used as the main living area in the premises, a heating device consisting of –
 - (a) an electric heater, or a gas heater, that is a fixture; or
 - (b) a heat pump; or
 - (c) a wood heater (not being an open fire place); or
 - (d) an open fire place, if there is in force in relation to the open fire place an approval under subsection (4); or
 - (e) another heating device that is prescribed.

Penalty: Fine not exceeding 50 penalty units.

- (4) The Commissioner, by notice to an owner of one or more premises, may approve, on the conditions specified in the notice, an open fire place for the purposes of subsection (3)(d) for

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use in such of the premises as are specified in the notice.

- (5) The Commissioner, by notice in the *Gazette*, may approve, on the conditions specified in the notice, an open fire place for the purposes of subsection (3)(d) for use in the premises, or a class of premises, specified in the notice.
- (6) A notice under this section is not a statutory rule for the purposes of the *Rules Publication Act 1953*.

36N. Window covering for privacy

- (1) An owner must not enter into, extend, or renew, a residential tenancy agreement in relation to premises unless curtains or blinds cover each window in any room, in the premises, that the owner knows is likely to be used as a bedroom or a living area.

Penalty: Fine not exceeding 50 penalty units.

- (2) Subsection (1) does not apply in relation to social housing.

36O. Ventilation

- (1) An owner must not enter into, extend, or renew, a residential tenancy agreement in relation to premises unless adequate ventilation is provided to each room in the premises in accordance with this section.

Penalty: Fine not exceeding 50 penalty units.

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- (2) For the purposes of subsection (1), adequate ventilation is provided to a room if –
- (a) there are one or more openings, in the room, that open to an area of the premises that is not both covered by a ceiling and surrounded by walls (including any walls with doors or windows); and
 - (b) the total area of all such openings constitutes not less than 5 per cent of the floor area of the room.
- (3) For the purposes of subsection (1), adequate ventilation is provided to a room (the *first room*) if –
- (a) one or more openings, in the room, open to an adjoining room; and
 - (b) the first room or the adjoining room to which the openings open is not a sanitary compartment; and
 - (c) the total area, of all the openings in the first room that open to an adjoining room, constitutes not less than 5 per cent of the floor area of the first room; and
 - (d) there are one or more openings in the adjoining room (not being the same openings as the openings in the first room); and
 - (e) the total area, of all the openings in the adjoining room (not being the same

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openings as the openings in the first room), constitutes not less than 5 per cent of the floor area of the adjoining room.

- (4) For the purposes of subsection (1), adequate ventilation is provided to a room that is a sanitary compartment, bathroom or laundry if the room is ventilated by a functioning mechanism (including but not limited to an exhaust fan) that –
- (a) takes air from the room directly to an area of the premises that is not both covered by a ceiling and surrounded by walls (including any walls with doors or windows); or
 - (b) takes air from the room directly to a roof space that –
 - (i) is adequately ventilated by open eaves or roof vents, or both; or
 - (ii) is covered by roof tiles to which sarking, or another material that would prevent air escaping between gaps in the tiles, has not been applied.
- (5) An owner must not enter into, extend, or renew, a residential tenancy agreement in relation to premises that contain a window that provides adequate ventilation for the purposes of subsection (1), unless the window is able to be securely fastened into a position that creates a gap, between an edge of the window and an edge of the window frame, that –

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- (a) is not less than 15 cms wide; and
- (b) does not enable a person to enter the room in which the window is situated.

Penalty: Fine not exceeding 50 penalty units.

(6) In this section –

opening means –

- (a) an open space in a door, wall or ceiling; or
- (b) a space that is created, or may be created, by the opening of a window or a door or other structure in a door, wall or ceiling;

sanitary compartment means a room designed to contain a toilet and not designed to contain a bath or shower.

36P. Exemption from requirements of provision of this Part

- (1) The Commissioner, by notice to an owner of premises, may specify that, for the period specified in the notice, the premises are exempted from the application of a provision of this Part that is specified in the notice.
- (2) The Commissioner, by notice in the *Gazette*, may specify that, for the period specified in the notice, premises, or a class of premises, specified in the notice are exempted from the application

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of a provision of this Part that is specified in the notice.

- (3) If premises are specified, or are within a class of premises specified, in a notice under subsection (1) or (2), to be exempted from the application of a provision of this Part, the provision does not apply in relation to the premises for the period specified in the notice.
- (4) A notice under this section is not a statutory rule for the purposes of the *Rules Publication Act 1953*.

PART 4 – TERMINATION OF AGREEMENTS

Division 1 – Termination

37. Termination of agreement

- (1) A residential tenancy agreement in respect of residential premises is terminated only by –
- (a) the delivery of vacant possession of the premises by the tenant to the owner as a result of their agreement to terminate the agreement; or
 - (b) the delivery of vacant possession of the premises by the tenant to the owner following a notice to vacate by the owner; or
 - (c) the delivery of vacant possession of the premises by the tenant to the owner following a notice to terminate by the tenant; or
 - (d) the delivery of vacant possession of the premises by order of the Court, or order of the Commissioner under section 38A, to the owner; or
 - (da) the making of an order of termination in accordance with section 17 of the *Family Violence Act 2004*; or
 - (db) the making of a closure order in relation to the premises under section 87 of the *Public Health Act 1997*; or

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- (dc) the death of the tenant, if there is no other surviving tenant in relation to the premises; or
 - (e) the recovery of vacant possession of the premises by the owner following abandonment or early vacation of the premises.
- (2) An owner must not regain, or attempt to regain, possession of the premises by any means other than those specified in subsection (1).

Penalty: Fine not exceeding 50 penalty units.

38. Notice of termination by tenant

- (1) A tenant of residential premises may serve on the owner of the premises a notice to terminate a residential tenancy agreement and deliver vacant possession of the premises to the owner on any of the following grounds:
- (a) the owner has failed to carry out any repairs that do not arise from the fault of the tenant within 28 days after receiving notification under section 32(2);
 - (b) the owner has failed to comply with any provision of the residential tenancy agreement;
 - (c) if the residential tenancy agreement is not for a fixed period, the tenant wishes to terminate it.

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- (2) Any payment of rent after a notice of termination takes effect does not constitute the existence of a new residential tenancy agreement.
- (3) Any payment of arrears of rent after a notice of termination takes effect does not revoke the notice unless the payment was made and accepted on that basis.

38A. Order allowing for termination in case of severe COVID-19 related hardship

- (1) An owner or tenant of residential premises to which a fixed term lease applies may apply to the Commissioner for an order declaring that the lease is terminated.
- (2) An owner or tenant of residential premises to which a fixed term lease applies may only apply under subsection (1) for an order on the grounds that the continuation of the lease would result in severe hardship to the owner, or tenant, respectively, related to the effect of the presence in the State of the socially-dislocating disease and the risk of its spread amongst persons in the State.
- (3) If the Commissioner is satisfied that the continuation of a fixed term lease to which an application under subsection (1) relates would result in severe hardship to the owner, or tenant, respectively, related to the effect of the presence in the State of the socially-dislocating disease and the risk of its spread amongst persons in the State, the Commissioner may make an order

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declaring that the lease is terminated from a date specified in the order.

- (4) An order under subsection (3) may specify that compensation is payable by the owner or tenant in relation to the termination of the lease.
- (5) The Commissioner, within 3 days of making an order under subsection (3) in relation to residential premises, is to notify the owner and the tenant of the residential premises of the making of the order.
- (6) An order made under subsection (3) in relation to residential premises is to specify that, unless an appeal is made under this section, the order takes effect on the day after the end of the 7-day period after the day on which notice of the order was given under subsection (5).

38B. Appeal against order under section 38A

- (1) An owner or tenant in relation to residential premises who is aggrieved by an order made by the Commissioner under section 38A(3) may appeal to the Court within the 7-day period after the day on which notice of the order was given under section 38A(5).
- (2) An order made under section 38A(3) in relation to residential premises may be enforced in the same manner as an order made by a magistrate under the *Magistrates Court (Civil Division) Act 1992*, if –

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- (a) no appeal has been made under subsection (1) by a tenant in relation to the residential premises within the 7-day period after the day on which notice of the order was given under section 38A(5); or
 - (b) where an appeal has been made under subsection (1) by a tenant in relation to the residential premises – the order has been confirmed by the Court under subsection (5)(a).
- (3) An appeal is to be heard as a minor civil claim under the *Magistrates Court (Civil Division) Act 1992* and, subject to this section, is to be instituted, heard and determined as prescribed.
- (4) An appeal is to be by way of rehearing.
- (5) On the hearing of an appeal the Court may –
- (a) confirm the order of the Commissioner under section 38A(3) and direct that the order of the Commissioner is to take effect from a specified date; or
 - (b) set aside the order of the Commissioner.
- (6) If –
- (a) an order is made under section 38A(3) in relation to residential premises; and
 - (b) an appeal has not been made under subsection (1) by an owner or tenant in relation to the residential premises within

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the 7-day period after the day on which notice of the order is given under section 38A(5) –

the lease to which the order relates is terminated on the date specified in the order of the Court.

39. Effect of notice of termination

- (1) Subject to subsections (3) and (4), a notice of termination takes effect on a date specified in the notice that is a date –
 - (a) in the case of boarding premises, at least 2 days after the notice is served; or
 - (ab)
 - (b) in any other case, at least 14 days after the notice is served.
- (2) A notice of termination on the ground that the owner has failed to comply with a provision of the residential tenancy agreement, other than a provision relating to repairs, is of no effect if the owner complies with that provision before the period of 14 days referred to in subsection (1) expires.
- (3) If –
 - (a) a residential tenancy agreement in respect of premises is not for a fixed period; and
 - (b) the premises are not boarding premises; and

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- (c) a date, specified in a notice of termination in respect of the agreement, is a date that is not 14 days or more after the notice is served on the owner –

the notice of termination is not invalid but only takes effect on the day after the end of 14 days after the day on which the notice is served.

(4) If –

- (a) a residential tenancy agreement in respect of premises is for a fixed period; and
- (b) the premises are not boarding premises; and
- (c) a date, specified in a notice of termination in respect of the premises, is a date that is not 14 days or more after the notice is served on the owner –

the notice of termination is not invalid but only takes effect on the day after the end of 14 days after the day on which the notice is served.

40. Form of notice of termination

- (1) In the case of premises other than boarding premises, a notice of termination is to state the following:
 - (a) the date of service of the notice;
 - (b) the name of the tenant;

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- (c) the name of the owner;
 - (d) the residential premises to which the notice applies;
 - (e) the details of the ground on which the notice is served;
 - (f) the date on which the notice takes effect.
- (2) In the case of boarding premises, a notice of termination is to state –
- (a) that the tenant intends to vacate the premises; and
 - (b) the date on which the tenant intends to vacate, which is to be at least 2 days after the date of the notice.

41. Order of termination

- (1) A party to a residential tenancy agreement may apply to the Court for an order that the agreement be terminated on any of the following grounds:
- (a) that another party has intentionally or recklessly caused or permitted, or is likely to intentionally or recklessly cause or permit, serious damage to –
 - (i) the residential premises or contents of those premises; or
 - (ii) any neighbouring premises;

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- (b) that another party has caused physical injury, or is likely to cause physical injury, to that party or a person occupying neighbouring premises.
- (2) If the Court is satisfied as to any of the grounds referred to in subsection (1), the Court may order –
- (a) that the residential tenancy agreement is terminated on a specified date without notice; and
 - (b) that vacant possession of the residential premises is to be delivered to the owner on that day.

Division 2 – Notice to vacate

42. Notice to vacate by owner

- (1) An owner of residential premises, including but not limited to social housing, may serve on a tenant of the premises a notice requiring the tenant to deliver vacant possession of the premises to the owner for any of the following reasons:
- (a) that the tenant has failed to comply with any provision of the residential tenancy agreement, except if subsection (4A) applies in relation to the notice in respect of the premises;
 - (b) where the residential tenancy agreement is not for a fixed period, that –

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- (i) the premises are to be sold or transferred to another person; or
 - (ii) the premises are to be used for a purpose other than as residential premises for rental; or
 - (iii) significant renovations are to be performed in respect of the premises; or
 - (iv) the premises are to be used as a residence by a member of the family of the owner;
- (c)
- (d) that a residential tenancy agreement is due to expire not more than 60 days after service of the notice;
- (da) that, where the residential tenancy agreement relates to social housing –
- (i) the income, from the prescribed sources, of the tenant (or, if the tenant is a member of a household, of all members of the household), for a continuous 12-month period, beginning not more than 18 months before the notice is given, is more than the prescribed amount; or
 - (ii) the value, in the 30 days before the notice is given, of the assets of the prescribed type, of the

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tenant (or, if the tenant is a member of a household, of all members of the household), is more than the prescribed amount, after there is deducted from the prescribed amount the total amount of all debts and liabilities of the tenant (or, if the tenant is a member of the household, of all the members of the household);

- (db) that, where the residential tenancy agreement relates to social housing –
 - (i) the premises contain 4 or more bedrooms, the tenants do not reasonably require all of the bedrooms in the premises and alternative premises have been offered to the tenant by the owner; or
 - (ii) the premises have a special facility, or modification, suitable for a person with a disability or special requirements, the tenant does not require such a facility or modification and alternative premises have been offered to the tenant by the owner;
- (dc) that, where the residential tenancy agreement relates to social housing, the tenant has, without the approval of the social housing provider, for a continuous

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- period of more than 8 weeks not occupied the premises;
- (dd) that, where the residential tenancy agreement relates to social housing provided by a social housing provider who leases the premises from the Director of Housing – the lease of the premises from the Director of Housing has expired or is to expire, or has been, or is to be, terminated by the Director of Housing;
 - (e) that an order has been made under section 86 of the *Land Titles Act 1980* for foreclosure of the premises;
 - (f) that the premises are to be sold pursuant to section 78 of the *Land Titles Act 1980*;
 - (g) that the tenant has caused nuisance at the premises that is substantial.
- (1A) For the purposes of subsection (1)(b), significant renovations are to be performed in respect of premises if –
- (a) the premises would be unfit for occupation while the renovations are taking place; or
 - (b) were the premises to remain occupied by a tenant during the renovations, there would be a risk to the health or safety of any tenant, any visitors or any person carrying out the renovations.

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- (1B) The regulations may prescribe for the purposes of subsection (1)(db)(i) the circumstances in which tenants do not reasonably require all of the bedrooms in premises.
- (2) A notice to vacate is not required if –
 - (a) the tenant has abandoned the residential premises; or
 - (b) an application under section 41 is made for an order of termination.
- (3) Any payment of rent after a notice to vacate takes effect does not constitute the existence of a new residential tenancy agreement.
- (4) In subsection (1)(b)(iv) and subsection (5), a reference to an owner in relation to a member of the family of the owner does not include a reference to a person who is an owner by virtue of paragraph (c) of the definition of *owner* in section 3(1).
- (4A) Subsection (1)(a) does not apply in relation to a notice in respect of premises if –
 - (a) the failure to comply with a provision of the agreement in relation to the premises consists of a failure by the tenant to pay rent; and
 - (b) either –
 - (i) the notice to vacate in relation to the premises is given within the emergency period or a

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subsequent COVID-19
emergency period; or

- (ii) the notice to vacate in relation to the premises was given before the COVID-19 emergency day, or before the day on which a subsequent COVID-19 emergency period begins, and the tenant has not before that day delivered vacant possession of the premises.

- (5) In this section –

member of the family of an owner means –

- (a) the owner’s domestic partner, son, daughter or parent; or
- (b) a parent of the owner’s domestic partner; or
- (c) another person who normally lives with the owner and is wholly or substantially dependent on the owner.
- (6) In this section, a tenant is a member of a household if the person is one of 2 or more persons, whether or not the person is related to any of the other persons, who –
- (a) occupy the same residential premises;
and

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- (b) contribute money for the purchase of food to be consumed at the premises or for the payment of amounts (apart from rent) owed for the provision of goods or services to the premises.

43. Effect of notice to vacate

- (1) Subject to this section, a notice to vacate takes effect on a date specified in the notice that is a date –
 - (a) at least 14 days after the notice is served, if the notice is for the reason referred to in section 42(1)(a), (dc) or (g); or
 - (b) at least 28 days after the notice is served, if the notice is for the reason referred to in section 42(1)(db); or
 - (ba) at least 42 days after the notice is served, if the notice is for the reason referred to in section 42(1)(b); or
 - (c) at least 42 days after the notice is served, if the notice is for the reason referred to in section 42(1)(d), but not before the date of the expiry of the residential tenancy agreement; or
 - (d) at least 60 days after the notice is served, if the notice is for the reason referred to in section 42(1)(e) or (f); or

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-
- (e) at least 90 days after the notice is served, if the notice is for the reason referred to in section 42(1)(da) or section 42(1)(dd).
- (2) A notice to vacate on the ground of failure to pay rent is of no effect if a tenant pays all arrears in rent before that notice takes effect unless 2 or more notices to vacate on that ground have been served on the tenant during the immediately preceding 12 months.
- (2A) A notice to vacate on the grounds of failure to pay rent is of no effect if –
- (a) the arrears of rent to which the notice to vacate relates are arrears in rent to which a rent arrears payment order made under section 24A(4) relates; and
 - (b) the rent arrears payment order has not been set aside under section 24B(4)(b); and
 - (c) no condition of the rent arrears payment order has been contravened; and
 - (d) each part of the total amount, of rent in arrears, that is required under the rent arrears payment order to be paid within a period, specified in the order, that has expired has been paid before the end of that period.
- (3) A notice to vacate on the ground that the tenant has failed to comply with a provision of the residential tenancy agreement is of no effect if the tenant complies with that provision before

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the period referred to in subsection (1)(a) expires.

- (3A) A notice to vacate on the ground that the premises are to be sold or transferred is of no effect unless there is served with the notice proof of an agreement to sell the premises or to transfer the premises to another person.
- (3B) If a notice to vacate for a reason specified in a paragraph in subsection (1) (other than subsection (1)(d)) specifies a date on which the notice is to take effect that is a date that occurs before the last day of the period of days specified in the paragraph, the notice to vacate is not invalid but only takes effect on the day after the last day of the period.
- (3C) If a notice to vacate for a reason specified in subsection (1)(d) specifies a date on which the notice is to take effect that is a date –
- (a) before the end of the period of 42 days after the notice is served; and
 - (b) not before the date of expiry of the residential tenancy agreement in respect of the premises –

the notice to vacate is not invalid but only takes effect on the day after the end of the period of 42 days after the notice is served.

- (4) A notice to vacate expires after the period of 28 days from the day on which it took effect.

44. Form of notice to vacate

A notice to vacate is to state the following:

- (a) the date of serving the notice;
- (b) the name of the tenant;
- (c) the name of the owner;
- (d) the residential premises to which the notice relates;
- (e) details of the reason for which the notice is served;
- (f) the date on which the notice takes effect.

45. Order for vacant possession

- (1) An owner may apply to the Court for delivery of vacant possession of residential premises by the tenant if a notice to vacate in respect of the premises has taken effect and vacant possession has not been delivered to the owner.
- (2) An owner is to serve on the tenant a copy of an application under subsection (1) a reasonable time before the application is heard.
- (3) The Court may order that vacant possession be delivered to the owner if satisfied that –
 - (a) a notice to vacate the premises was properly given; and
 - (b) the reason for serving the notice to vacate was genuine or just; and

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- (c) vacant possession was not delivered to the owner; and
 - (ca) where the premises are social housing and the reason for serving the notice is a reason referred to in section 42(1)(da), (db) or (dc), vacating the premises would not result in unreasonable financial disadvantage, or unreasonable social disadvantage, to the tenant; and
 - (d) the tenant was served with a copy of the application.
- (3A) The Commissioner may issue guidelines setting out the circumstances in which vacating premises is to be taken to result in unreasonable financial disadvantage, or unreasonable social disadvantage, to a tenant.
- (3B) Guidelines, if any, issued under subsection (3A) may be taken into account in considering whether, for the purposes of this section, vacating premises would result in unreasonable financial disadvantage, or unreasonable social disadvantage, to the tenant.
- (4) An order under subsection (3) is to specify the date on which it takes effect.
- (5) A notice to vacate is properly given if –
- (a) the notice states the information required under section 44 (even if the statement of the date on which the notice takes effect is incorrect because of the operation of section 43(3B) or (3C)); and

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-
- (b) the tenant was served with the notice;
and
 - (c)

Division 3 – Abandonment of premises and goods

46. Early vacation

Early vacation of residential premises occurs if –

- (a) the tenant has ceased to occupy those premises; and
- (b) a notice of termination has not been served in respect of those premises; and
- (c) a notice to vacate has not been served in respect of those premises; and
- (d) the tenant notified the owner of the intention to vacate the premises.

47. Abandonment

Residential premises are abandoned if –

- (a) the tenant has ceased to occupy those premises; and
- (b) a notice of termination has not been served in respect of those premises; and
- (c) a notice to vacate has not been served in respect of those premises.

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47A. Order declaring abandonment

- (1) An owner of residential premises may apply to the Court for an order declaring that the premises are abandoned.
- (2) If satisfied that the residential premises are abandoned, the Court may make an order to that effect.
- (3) Vacant possession of the residential premises is delivered to the owner as at the date of the order.

47B. Loss following abandonment or early vacation

Following abandonment or early vacation of residential premises, a tenant is liable to the owner for –

- (a) rent payable under the residential tenancy agreement from the date of the abandonment or early vacation of the premises until –
 - (i) the date on which another residential tenancy agreement is entered into; or
 - (ii) the date at which the residential tenancy agreement for those premises could have been terminated under this Act, if another residential tenancy agreement is not entered into before that date; and

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- (b) any other loss arising from the abandonment or early vacation.

47C. Joint tenant ceases occupancy

- (1) If a joint tenant ceases to occupy residential premises, the joint tenant is not liable for any loss caused by an act or omission of any other tenant remaining in occupancy of those premises if that act or omission occurred after the joint tenant ceased to occupy those premises.
- (2) For the purposes of subsection (1), the onus of proving when the act or omission causing the loss occurred is on the joint tenant who ceased to occupy the premises.

48. Disposal or sale of abandoned goods

- (1) If a residential tenancy agreement is terminated and goods on the premises to which the agreement relates appear to be abandoned by the tenant, the owner may –
 - (a) dispose of the goods if they appear to the owner to have no value; or
 - (b) sell the goods if they appear to have a value less than the prescribed amount; or
 - (c) apply to the Court for an order permitting the sale of the goods for the best price reasonably obtainable if they appear to have a value equal to or more than the prescribed amount.

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- (2) The owner is to verify by a statutory declaration the means of disposal of any goods under subsection (1)(a).
- (3) The proceeds of the sale of goods are to be dealt with as follows:
 - (a) firstly, in the payment of any debt owed by the tenant to the owner;
 - (b) secondly, in the payment of the reasonable costs of the sale;
 - (c) thirdly, any balance to be kept in an interest bearing account for the tenant for a period of 6 months.
- (4) If the tenant does not claim any proceeds of the sale of goods kept under subsection (3)(c) within 6 months, the proceeds become the property of the Commissioner.

PART 4A – BOARDING PREMISES

48A. Application of Part 4A

This Part applies only to boarding premises.

48B. Cost of meals and other services

- (1) A residential tenancy agreement in respect of boarding premises is to specify, separately from the rent, the cost of meals and any other services provided in association with accommodation.
- (2) A receipt given by the owner for a payment of rent is to specify separately any amounts paid for meals or any other services provided in association with the accommodation.

48C. Access to toilet and ablution facilities

- (1) A tenant at boarding premises is entitled to –
 - (a) access at all times to a toilet and hand-washing facilities; and
 - (b) reasonable use of either a bathroom or a shower at least once each day.
- (2) Access to a toilet, bathroom or shower under this section is to be private.

48D. Shared rooms

An owner must not permit boarding premises to be occupied by more than one tenant unless they

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are joint tenants under the residential tenancy agreement or one of them is a carer for the other person.

48E. Meal times

If meals are provided in connection with the provision of accommodation, the meals are to be provided within the following periods:

- (a) in the case of breakfast, from 6 a.m. to 9 a.m.;
- (b) in the case of lunch, from 12 midday to 2 p.m.;
- (c) in the case of dinner, from 5 p.m. to 8 p.m.

48F. Maintenance of shared facilities

An owner of boarding premises is responsible for the maintenance in proper working condition of any bathrooms, toilets and other facilities which are shared by tenants.

48G. Statement of key terms

- (1) Before entering into a residential tenancy agreement, whether in writing or not, the owner must provide the tenant with a written statement as to the principal terms of the agreement.
- (2) The statement is to be signed by both the owner and the tenant on entering into the agreement.

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- (3) The statement –
- (a) is to be accompanied by a copy of any house rules, as mentioned in section 48H, that apply to the tenant; or
 - (b) is to specify a place within the premises where the tenant may inspect the house rules at any time.
- (4) The owner must keep a copy of the statement for at least 6 months after the termination of the agreement.
- (5) For the purposes of this section, the principal terms of a residential tenancy agreement include –
- (a) the names of the owner and the tenant; and
 - (b) the location of the boarding premises; and
 - (c) any facilities provided for the use of the tenant; and
 - (d) the date on which the agreement is made; and
 - (e) if the agreement is for a fixed term, the date of expiry of the agreement; and
 - (f) the amount of rent and the period for which it is to be paid; and
 - (g) a statement of any services to be provided in connection with the

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agreement and the cost, times and frequency of each of those services.

48H. Content of house rules

- (1) If a residential tenancy agreement requires the tenant to observe any house rules, the rules are to apply equally to all tenants and are to state –
 - (a) if meals are to be provided, the times when they are available; and
 - (b) where facilities are provided for shared use, any restrictions or costs associated with access to, or use of, those facilities; and
 - (c) any rules relating to access to bathroom and shower facilities; and
 - (d) any restrictions on access by visitors; and
 - (e) any restrictions on the use of parking facilities or the storage of goods; and
 - (f) where services are provided in connection with accommodation, the times when the services are available; and
 - (g) if smoking is restricted, the places where smoking is permitted; and
 - (h) any restrictions on the consumption of alcohol; and

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- (i) a method of changing the house rules;
and
 - (j) a method of taking into account the views of tenants in the development of house rules.
- (2) If a house rule is inconsistent with a provision of this Act, the house rule is invalid to the extent of the inconsistency.
 - (3) The house rules are to be displayed in a prominent place to which all tenants have access or are to be available on demand to any tenant.

48I. Power of Commissioner to make orders

- (1) The Commissioner may make an order requiring that, in the case of boarding premises, a party to a residential tenancy agreement is to comply with a provision of this Act or of the agreement and may also make any other order provided for under this Act, except an order under section 41 or 45.
- (2) An order made under subsection (1) may be enforced in the same manner as an order made by a magistrate under the *Magistrates Court (Civil Division) Act 1992*.

48J. Appeal from orders of Commissioner

- (1) A person who is aggrieved by an order made by the Commissioner made under section 48I may appeal to the Court within 7 days after receiving notice of that order.

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- (2) The appeal is to be by way of rehearing and the Court may –
 - (a) confirm the order of the Commissioner and direct that the order is to take effect from a specified date; or
 - (b) set aside the order of the Commissioner; or
 - (c) set aside the order of the Commissioner and substitute another order that the Commissioner could have made.
- (3) The appeal is to be heard as a minor civil claim under the *Magistrates Court (Civil Division) Act 1992* and, subject to this section, is to be instituted, heard and determined as prescribed.

PART 4B – RENTAL DEPOSIT AUTHORITY

48K. Rental Deposit Authority

- (1) There is established a Rental Deposit Authority.
- (2) The Authority –
 - (a) may have a seal; and
 - (b) may sue and be sued in its name.
- (3) If the Authority has a seal –
 - (a) it is to be kept and used as authorised by the Authority; and
 - (b) all courts and persons acting judicially must take judicial notice of the imprint of the seal on a document and presume that it was duly sealed by the Authority.

48L. Constitution of Authority

The Authority is constituted by the Director of Consumer Affairs and Fair Trading.

48M. Functions of Authority

The functions of the Authority are –

- (a) to accept, hold and disburse security deposits in accordance with this Act; and
- (b) to collect data on the residential tenancy market in Tasmania; and

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- (c) to conduct public awareness campaigns to educate parties to residential tenancy agreements regarding their obligations; and
- (d) to carry out any other functions conferred on it by this Act or as may be prescribed.

48N. Powers of Authority

- (1) The Authority has power to do anything that is necessary or convenient to be done for or in connection with the performance of its functions.
- (2) Without limiting subsection (1), the Authority –
 - (a) may acquire, hold, dispose of and otherwise deal with property other than real property; and
 - (b) may enter into contractual arrangements with other persons and bodies; and
 - (c) may enter into any arrangements or agreements with any person to act as its agent in the performance of any of its functions under this Act; and
 - (d) may do any other thing that it would be entitled to do if it were a body corporate.

48O. Staff of Authority

- (1) The Authority may arrange with the Secretary of the Department for State Service officers and State Service employees employed in the

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Department to be made available to enable the Authority to perform and exercise its functions and powers.

- (2) On the written request of the Authority, the Secretary of the Department may arrange with another Head of a State Service Agency for State Service officers and State Service employees employed in that Agency to be made available to the Authority for the purpose of enabling the Authority to perform and exercise its functions and powers.
- (3) State Service officers and State Service employees made available under subsection (1) or (2) may serve the Authority in conjunction with State Service employment.
- (4) All expenses associated with the use by the Authority of the services of a State Service officer or State Service employee referred to in subsection (1) or (2) are to be met by the Authority unless otherwise agreed between the Secretary of the Department and the Authority.

48P. Assistance and facilities

- (1) The Authority may arrange with one or more of the following persons to provide assistance and facilities to it to enable it to perform and exercise its functions and powers:
 - (a) the Secretary of the Department;
 - (b) another Head of a State Service Agency;

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- (c) any other person if the Minister approves it.
- (2) All expenses associated with the use by the Authority of the assistance and facilities provided under subsection (1) are to be met by the Authority unless otherwise agreed between the Secretary of the Department and the Authority.

48Q. Funds of Authority

- (1) The funds of the Authority consist of –
 - (a) any money provided by Parliament for the purposes of the Authority; and
 - (b) any interest earned in respect of the security deposits held by the Authority; and
 - (c) any security deposit, or part of a security deposit, forfeited to the Authority under section 30A.
- (2) The funds of the Authority are to be applied in the payment or discharge of the expenses, charges and obligations incurred or undertaken by the Authority in the performance of its functions and exercise of its powers.

48R. Account in Public Account

- (1) The Treasurer is to establish in the Public Account an interest bearing account into which

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the Authority is to pay the security deposits accepted by it.

- (2) The money standing to the credit of the account is to be used for the disbursement by the Authority of the security deposits held by it in accordance with this Act.
- (3) The Treasurer is to pay to the Authority from the money standing to the credit of the account –
 - (a) any money forfeited to the Authority under section 30A; and
 - (b) any interest accrued on the account.

48S. Accounts and financial statements of Authority

- (1) The Authority must –
 - (a) keep such accounting records as correctly record and explain its transactions (including any transactions as trustee) and financial position; and
 - (b) keep those records in a manner that –
 - (i) allows true and fair accounts of the Authority to be prepared from time to time; and
 - (ii) allows separate accounts to be prepared in respect of the security deposits held by the Authority and in respect of the funds of the Authority; and

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- (iii) allows its accounts to be conveniently and properly audited or reviewed; and
 - (iv) complies with any instruction issued to it by the Treasurer; and
- (c) retain those records for a period of not less than 7 years after the completion of the transaction to which they relate or such other period as the Minister determines.

48T. Delegation

The Authority may delegate to a State Service officer or State Service employee any of its functions or powers under this Act other than this power of delegation.

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PART 4C – RESIDENTIAL TENANCY DATABASES

48U. Interpretation

In this Part –

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

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

inaccurate, in relation to personal information in a residential tenancy database, includes information that is inaccurate because –

- (a) the information indicates that the person owes an owner an amount that is more than the security deposit for a residential tenancy agreement; and
- (b) the amount owed was paid to the owner more than 3 months after the amount became due;

list, personal information in a residential tenancy database –

- (a) means –
 - (i) enter the personal information into the database; or

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(ii) give the personal information to a database operator or someone else for entry into the database; and

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

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

(a) for a listing made on the basis the person owes an owner an amount that is more than the security deposit for a residential tenancy agreement, the amount owed was paid to the owner within 3 months after the amount became due; or

(b) for a listing made on the basis the Court has made an order under section 41 terminating the residential tenancy agreement, the order has been revoked following a review of the making of the order;

personal information means information (including an individual's name) or an

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opinion, whether true or not, about an individual whose identity is apparent, or can be reasonably ascertained, from the information or opinion;

residential tenancy database means a database –

- (a) containing personal information –
 - (i) relating to, or arising from, the occupation of residential premises under a residential tenancy agreement; or
 - (ii) entered into the database for reasons relating to, or arising from, the occupation of residential premises under a residential tenancy agreement; and
- (b) with an intended purpose of use by owners or agents of owners for checking a person's tenancy history for deciding whether a residential tenancy agreement should be entered into with the person.

48V. Application of Part

This Part does not apply to a residential tenancy database kept by an entity, including a

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department of the government of a State or Territory, for use only by that entity or its officers, employees or agents.

48W. Notice of usual use of database

- (1) This section applies if –
 - (a) a person (*the applicant*) applies to an owner, whether or not through the owner's agent, to enter into a residential tenancy agreement; and
 - (b) the owner or, if the application is made through the owner's agent, the owner or agent usually uses one or more residential tenancy databases for deciding whether a residential tenancy agreement should be entered into with a person.
- (2) The owner or agent must, when the application is made, give the applicant written notice stating the following:
 - (a) the name of each residential tenancy database the owner or agent usually uses, or may use, for deciding whether a residential agreement should be entered into with a person;
 - (b) that the reason the owner or agent uses a residential tenancy database specified under paragraph (a) is for checking an applicant's tenancy history;

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-
- (c) for each residential tenancy database specified under paragraph (a), how persons may contact the database operator who operates the database and obtain relevant information from the operator.
- (3) Subsection (2) applies in relation to a residential tenancy database whether or not the owner or agent intends to use the database for deciding whether a residential tenancy agreement should be entered into with the applicant.
- (4) However, the owner or agent is not required to give the written notice referred to in subsection (2) if a written notice stating the matters mentioned in the subsection was given to the applicant not more than 7 days before the application was made.

48X. Notice of listing if database used

- (1) This section applies if –
- (a) a person (*the applicant*) applies to an owner, whether or not through the owner’s agent, to enter into a residential tenancy agreement; and
- (b) the owner or, if the application is made through the owner’s agent, the owner or agent uses a residential tenancy database for checking whether personal information about the applicant is in the database; and

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- (c) personal information about the applicant is in the database.
- (2) The owner or agent must, as soon as practicable but within 7 days after using the database, give the applicant a written notice stating –
- (a) the name of the database; and
 - (b) that personal information about the applicant is in the database; and
 - (c) the name of each person who listed the personal information in the database; and
 - (d) how and in what circumstances the applicant can have the personal information removed or amended under this Part.

Penalty: Fine not exceeding 50 penalty units.

48Y. Listing can be made only for particular breaches by particular persons

- (1) An owner, owner's agent or database operator must not list personal information about a person in a residential tenancy database unless –
- (a) the person was a tenant under a residential tenancy agreement that has ended; and
 - (b) the person has breached the agreement; and
 - (c) because of the breach, either –

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- (i) the person owes the owner an amount that is more than the security deposit for the agreement; or
 - (ii) the Court has made an order under section 41 terminating the residential tenancy agreement; and
- (d) the personal information –
- (i) relates only to the breach; and
 - (ii) is accurate, complete and unambiguous.

Penalty: Fine not exceeding 50 penalty units.

- (2) Without limiting subsection (1)(d)(ii), the personal information must indicate the nature of the breach.

48Z. Further restrictions on listing

- (1) An owner, owner's agent or database operator must not list personal information about a person in a residential tenancy database unless the owner, agent or operator –
- (a) has, without charging a fee –
 - (i) given the person a copy of the personal information; or

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- (ii) taken other reasonable steps to disclose the personal information to the person; and
- (b) has given the person at least 14 days to review the personal information and make submissions –
 - (i) objecting to its entry into the database; or
 - (ii) about its accuracy, completeness and clarity; and
- (c) has considered any submissions made.

Penalty: Fine not exceeding 50 penalty units.

- (2) Subsection (1) does not apply if the owner, owner’s agent or database operator cannot locate the person after making reasonable enquiries.
- (3) Subsection (1)(b) and (c) do not apply –
 - (a) to information that, at the time of the listing, is contained in publicly available Court records; or
 - (b) to a listing involving only an amendment of personal information about a person under section 48ZA.

48ZA. Ensuring quality of listing – owner’s or agent’s obligation

- (1) This section applies if an owner or owner’s agent who lists personal information in a residential

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tenancy database becomes aware that the information is inaccurate, incomplete, ambiguous or out of date.

- (2) The owner or agent must, within 7 days, give written notice of the following to the database operator who keeps the database:
 - (a) if the information is inaccurate, incomplete or ambiguous –
 - (i) that the information is inaccurate, incomplete or ambiguous; and
 - (ii) how the information must be amended so that it is no longer inaccurate, incomplete or ambiguous;
 - (b) if the information is out of date, that the information is out of date and must be removed.

Penalty: Fine not exceeding 50 penalty units.

- (3) The owner or agent must keep a copy of the written notice for one year after it was given under subsection (2).

48ZB. Ensuring quality of listing – database operator’s obligation

- (1) This section applies if an owner or owner’s agent who has listed personal information in a tenancy database gives the database operator who operates the database a written notice stating that the personal information must be –

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- (a) amended in a stated way to make it accurate, complete and unambiguous; or
 - (b) removed.
- (2) The database operator must amend the personal information in the stated way, or remove the personal information, within 14 days after the operator is given the written notice.

Penalty: Fine not exceeding 50 penalty units.

48ZC. Providing copy of personal information listed

- (1) An owner or owner's agent who lists personal information about a person in a residential tenancy database must, if asked in writing by the person, give the person a copy of the information within 14 days after the request is made.

Penalty: Fine not exceeding 50 penalty units.

- (2) A database operator must, if asked in writing by a person whose personal information is in the residential tenancy database kept by the operator, give the person a copy of the information within 14 days after the request is made.

Penalty: Fine not exceeding 50 penalty units.

- (3) If an owner or owner's agent charges a fee for giving personal information under subsection (1), or a database operator charges a fee for giving personal information under subsection (2), the subsection applies only if the fee has been paid.

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- (4) An owner or owner’s agent charging a fee for giving personal information under subsection (1), or a database operator charging a fee for giving personal information under subsection (2), must ensure that the fee –
- (a) is not excessive; and
 - (b) applies to the giving of the information and not to the lodging of a request for the information.

Penalty: Fine not exceeding 50 penalty units.

48ZD. Notifying relevant non-parties of Commissioner order about listing

- (1) This section applies if –
- (a) under section 48ZF, the Commissioner makes an order that a person must, in relation to a residential tenancy database –
 - (i) amend personal information in a stated way; or
 - (ii) remove all or particular personal information about a person; and
 - (b) the person against whom the order is made (*the relevant person*) is not a party to the proceeding for the dispute.
- (2) The Commissioner must ensure a copy of the order is given to the relevant person.

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48ZE. Keeping personal information listed

(1) In this section –

national privacy principles means the principles stated in Schedule 3 of the *Privacy Act 1988* of the Commonwealth.

(2) A database operator must not keep personal information about a particular person in the operator’s residential tenancy database for longer than –

(a) 3 years; or

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

(3) However, a database operator may keep the person’s name in the operator’s residential tenancy database for longer than the period stated in subsection (2)(a) or (b) if –

(a) other personal information about the person in the database is attached to the name; and

(b) the other personal information is not required to be removed under subsection (2) or another law.

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- (4) This section does not limit the operation of another provision of these model provisions or a provision of another law that requires the removal of the personal information.

48ZF. Civil proceedings to enforce compliance with Part

- (1) In this section –

eligible person means a person affected by information kept under this Part or a person authorised by such a person as a representative of the affected person.

- (2) An eligible person may apply to the Commissioner for an order under this section.
- (3) The Commissioner may make any order he or she thinks fit in respect of an application under subsection (2) if the Commissioner is satisfied that –
- (a) personal information kept in the residential tenancy database is inaccurate, incomplete, ambiguous or out of date; or
 - (b) the inclusion of information that affects the eligible person is unjust in the circumstances, having regard to the following:
 - (i) the reason for the listing in the residential tenancy database;
 - (ii) the eligible person's, or the tenant's, involvement in any acts

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or omissions giving rise to the listing of the information in the residential tenancy database;

(iii) any adverse consequences suffered, or likely to be suffered by the eligible person because of the listing of the information in the residential tenancy database;

(iv) any other matter the Commissioner considers relevant.

(4) The Commissioner may, by an order under this section, fix a period for compliance and impose any other requirements the Commissioner considers necessary or expedient for enforcement of the order.

PART 5 – MISCELLANEOUS

49. Subletting

- (1) The tenant is not to sublet residential premises –
- (a) without the consent of the owner of the premises; and
 - (b) unless the tenant –
 - (i) is also an occupier of the premises; or
 - (ii) sublets the premises to one of his or her employees.

(1AA) Subsection (1)(b)(i) does not apply in relation to the subletting of premises by a tenant if the tenant is –

- (a) a social housing provider; or
- (b) the Director of Housing.

(1A) An agreement to sublet residential premises in contravention of subsection (1) is invalid.

- (2) If a tenant sublets residential premises –
- (a) the residential tenancy agreement relating to the premises continues in force as if the tenant had not sublet the premises; and
 - (b) the tenant is liable for any act done or omitted to be done by the sublessee in relation to that agreement.

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49A. Transfer of residential tenancy agreement

- (1) The tenant is not to transfer his or her rights and obligations under a residential tenancy agreement without the consent of the owner of the premises.
- (2) An agreement to transfer the rights and obligations of a tenant under a residential tenancy agreement in contravention of subsection (1) is invalid.
- (3) If, under this section, a tenant transfers his or her rights and obligations under a residential tenancy agreement –
 - (a) the transferee –
 - (i) becomes the tenant for the purposes of this Act; and
 - (ii) is taken to be the tenant under the residential tenancy agreement for the purposes of this Act; and
 - (b) the transferor is no longer the tenant for the purposes of this Act.
- (4) The owner, transferor and transferee are to –
 - (a) each sign a document recording the transfer of the rights and obligations under a residential tenancy agreement and the date the transfer took place; and
 - (b) each receive a copy of the signed and dated record of the transfer for his or her records.

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- (5) Failure to comply with subsection (4) does not affect the validity of a transfer under this section of rights and obligations under a residential tenancy agreement.

49B. Tenancy ceases on death of tenant

Despite any other law to the contrary, on the death of a tenant, the tenancy does not vest in the heirs or successors of the tenant.

50. Consent

An owner is not to –

- (a) unreasonably refuse to give consent under section 49; or
- (b) charge for giving consent under that section, other than for expenses reasonably incurred in relation to giving that consent.

51. Impediment to occupancy

There is an implied warranty in a residential tenancy agreement on the part of the owner of the premises to which the agreement relates that at the time of entering the agreement there was no legal impediment of which the owner knew or ought to have known in respect of the occupation of the premises for the period of the tenancy.

52. Use of premises

A tenant is not to –

- (a) use, or cause to be used, the residential premises for –
 - (i) any unlawful purpose; or
 - (ii) any purpose other than residential purposes; or
- (b) cause or permit a nuisance to be made on or from the premises.

53. Responsibility of tenant for cleanliness and damage

(1) A tenant of residential premises –

- (a) is to keep the premises in a reasonable state of cleanliness having regard to the condition of the premises at the beginning of the tenancy; and
- (b) at the end of the tenancy, is to leave the premises as nearly as possible in the same condition, apart from reasonable wear and tear –
 - (i) as set out in the condition report; or
 - (ii) if there is no condition report, as the premises were at the start of the tenancy.

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- (2) A tenant is not to be taken to have failed to comply with subsection (1) in relation to premises if –
- (a) the failure ought reasonably to be taken to have occurred for reasons related to the socially-dislocating disease, including but not limited to the effect of any other provision of this Act included by the COVID-19 Emergency Act; or
 - (b) it is not reasonably practicable to comply with that subsection on grounds reasonably related to the presence of that disease in the State.

54. Alterations, additions and fixtures

- (1) Unless a residential tenancy agreement provides otherwise, a tenant, without the written consent of the owner of the premises to which the agreement relates, is not to –
- (a) affix any fixture to the premises; or
 - (b) make any alteration or addition to the premises.
- (2) A tenant may remove any fixture that the tenant has affixed to the premises unless the removal is likely to cause damage to the premises.
- (3) If the tenant causes any damage to the premises by removing any fixture, the tenant is to –
- (a) notify the owner as soon as practicable; and

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(b) at the owner's option –

(i) repair the damage; or

(ii) compensate the owner for any reasonable expenses incurred by the owner in repairing the damage.

55. Quiet enjoyment

(1) A tenant has the right of quiet enjoyment of residential premises without interference by the owner of the premises.

(2) An owner of residential premises must not interfere with the reasonable peace, comfort and privacy of the tenant in using those premises.

Penalty: Fine not exceeding 50 penalty units.

55A. Certain photographs not to be displayed by owner

An owner of residential premises must not, without the written consent of a tenant, display to the public a photograph, film or video recording of the premises that displays any object in the premises that may identify the tenant or another person.

Penalty: Fine not exceeding 50 penalty units.

56. Right of entry

(1) Subject to this section, an owner of residential premises must not enter the premises or permit

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any other person to enter the premises without the tenant's permission.

Penalty: Fine not exceeding 50 penalty units.

(2) An owner of residential premises may enter the premises at any time without the tenant's permission for any of the following reasons:

(a) it is reasonably believed that –

(i) the tenant is ill or injured and is unable to give permission; or

(ii) a denial of immediate access is likely to result in damage to all or part of the premises; or

(iii) there is a risk to the tenant or another person present on the premises; or

(iv) damage has occurred to the premises;

(b) it is reasonably believed that the premises have been abandoned.

(3) An owner of residential premises may enter the premises by giving at least 24 hours' notice to the tenant if entry is for one of the following reasons:

(a - b)

(c) to meet commitments under the residential tenancy agreement;

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- (d) if it is reasonably suspected that the tenant has failed to comply with any provision of the residential tenancy agreement;
 - (e) to ensure that repairs have been properly carried out;
 - (ea) except in the case of boarding premises, to carry out an inspection within one month of the commencement of the residential tenancy agreement;
 - (f) to carry out routine inspections –
 - (i) once a month, in the case of boarding premises; or
 - (ii) once every 3 months, in any other case.
- (4) An owner of residential premises may enter the premises without the approval of the tenant to show the premises to one prospective tenant only and any persons accompanying the prospective tenant –
- (a) if a notice to terminate or notice to vacate has been given –
 - (i) on not more than one occasion on any day; and
 - (ii) on not more than 5 days in any week; and

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- (iii) on the giving of not less than 48 hours' notice in writing to the tenant; and
 - (iv) between the hours of 8 a.m. and 6 p.m.; or
 - (b) if a notice to terminate or notice to vacate has not been given, within 28 days of the expiry of the residential tenancy agreement –
 - (i) on not more than one occasion on any day; and
 - (ii) on not more than 5 days in any week; and
 - (iii) on the giving of not less than 48 hours' notice in writing to the tenant; and
 - (iv) between the hours of 8 a.m. and 6 p.m.
- (4A) An owner who wishes to let residential premises may, with the prior written approval of the tenant of the premises, by notice to the public, invite prospective tenants to inspect the premises in the presence of the owner within the period specified in the approval.
- (4B) An owner of residential premises may enter the premises without the approval of the tenant to show the premises to one prospective purchaser only and any persons accompanying the prospective purchaser –

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- (a) on not more than one occasion on any day; and
 - (b) on not more than 5 days in any week; and
 - (c) on the giving of not less than 48 hours' notice in writing to the tenant; and
 - (d) between the hours of 8 a.m. and 6 p.m.
- (4C) An owner who wishes to sell residential premises may, with the prior written approval of the tenant of the premises, by notice to the public, invite prospective purchasers to inspect the premises in the presence of the owner within the period specified in the approval.
- (5) After giving notice under subsection (3), the owner may enter the premises –
- (a) during any period agreed to by the owner and the tenant of the premises; or
 - (b) if there is no agreement, between 8 a.m. and 6 p.m. as specified by the owner.
- (6) Subsections (3) and (5) do not apply in relation to residential premises during –
- (a) the emergency period, unless a period is determined under subsection (9)(a) during the emergency period, in which case subsections (3) and (5) do not apply to residential premises during the period so determined; or

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- (b) a subsequent COVID-19 emergency period, unless a period is determined under subsection (9)(b) during the subsequent COVID-19 emergency period, in which case subsections (3) and (5) do not apply to residential premises during the period so determined.
- (7) Subsection (6) does not apply to residential premises in relation to an entry for the purposes of repairs referred to in subsection (3)(e) if the repairs are emergency repairs or urgent repairs.
 - (8) Subsections (2)(b), (4), (4A) and (4C) do not apply during –
 - (a) the emergency period, unless a period is determined under subsection (9)(a) during the emergency period, in which case those subsections do not apply during the period so determined; or
 - (b) a subsequent COVID-19 emergency period, unless a period is determined under subsection (9)(b) during the subsequent COVID-19 emergency period, in which case those subsections do not apply during the period so determined.
 - (9) The Commissioner, by notice in the *Gazette*, may, for the purposes of subsection (6) or (8), determine –
 - (a) a period, specified in the notice, that ends before the end of the emergency period; or

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- (b) a period, specified in the notice, that ends before the end of a subsequent COVID-19 emergency period.

57. Locks and security devices

- (1) The owner of residential premises, other than boarding premises, is to ensure that during a residential tenancy agreement –
 - (a) the premises are fitted with locks and any other security devices that are necessary to secure the premises; and
 - (b) those locks and security devices are maintained during the period of the residential tenancy agreement.

Penalty: Fine not exceeding 50 penalty units.

- (1A) The owner of boarding premises must ensure that during the period of the residential tenancy agreement –
 - (a) the room, occupied as a principal place of residence, to which all or part of the agreement relates is fitted with a lock and any other device that is necessary to secure the room; and
 - (b) the bathroom and toilet facilities in the boarding premises are fitted with a device enabling an occupant of the facility to exclude other persons while using the facility or a part of the facility

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intended for use by one person at a time;
and

- (c) any entrance to the premises in which the boarding premises are situated is fitted with a lock and any other device that is necessary to secure the boarding premises; and
- (d) the locks and other devices necessary to secure the boarding premises are maintained during the period of the residential tenancy agreement.

Penalty: Fine not exceeding 50 penalty units.

- (1B) A tenant of residential premises may apply to the Court for an order requiring the owner of the premises to comply with subsection (1).
- (2) Any party to a residential tenancy agreement must not add, alter or remove any lock or other security device without –
 - (a) the permission of the other party; or
 - (b) an order under subsection (4).

Penalty: Fine not exceeding 50 penalty units.

- (2A) Subsection (2) does not apply to a person in relation to the addition, alteration or removal of a lock in circumstances to which subsection (2B) applies.
- (2B) A tenant may, without the authority of an order of the Court or the consent of the owner of the

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residential premises, add, alter or remove any lock or other security device –

(a) if –

(i) an FVO, within the meaning of the *Family Violence Act 2004*, is in force under that Act; or

(ii) a PFVO, within the meaning of the *Family Violence Act 2004*, is in force under that Act; or

(iii) a recognised DVO, within the meaning of the *Domestic Violence Orders (National Recognition) Act 2016*, is in force under that Act; and

(b) the FVO, PFVO or recognised DVO was made for the purpose of protecting the tenant.

- (3) A party to a residential tenancy agreement may apply to the Court for an order authorising that party to alter, add or remove any lock or other security device.
- (4) The Court may make the order if satisfied that it is reasonable to do so in the circumstances.
- (5) If a party to a residential tenancy agreement alters or adds any lock or other security device, that party is to provide the other party with a copy of the key, opening device or information required to open the lock or security device.

Penalty: Fine not exceeding 50 penalty units.

58. Compliance with orders

A person must comply with any order made under this Act.

Penalty: Fine not exceeding 50 penalty units.

59. Liability for action of others

- (1) The tenant of residential premises is liable under this Act for any act or omission in relation to the premises by a person who is lawfully on the premises as if it had been an act or omission by the tenant.
- (2) Subsection (1) does not apply to an act or omission by a person who has a right to enter the premises without the tenant's consent.

60. Cost of preparing agreements

The owner of residential premises is liable for the payment of any costs incurred in the preparation of the residential tenancy agreement relating to those premises.

61. Record of rent

- (1) The owner of residential premises is to keep a record of all the rent received in respect of the premises during the period while a residential tenancy agreement is in force.

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- (2) The record is to be kept by the owner for a period of 5 years after the residential tenancy agreement is terminated.

62. Notification of name and address

- (1) At the time of entering a residential tenancy agreement, the owner is to notify the tenant in writing of –
- (a) the full name and residential or business address of the owner or any agent of the owner; and
 - (b) in the case of boarding premises, a telephone number or other means of contacting the owner at any time.

Penalty: Fine not exceeding 50 penalty units.

- (2) If the owner or agent is a corporation, the owner is to notify the tenant in writing of –
- (a) the name of a responsible officer of the corporation; and
 - (b) the address of the registered office of the corporation.

Penalty: Fine not exceeding 50 penalty units.

- (3) The owner is to notify the tenant of any change in any name or address required under subsection (1).

Penalty: Fine not exceeding 50 penalty units.

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- (4) If a person succeeds another person as the owner of residential premises to which a residential tenancy agreement relates, the new owner is to notify the tenant of the premises of any change in the information referred to in subsection (1) or (2).

Penalty: Fine not exceeding 50 penalty units.

63. Agent of tenant

- (1) A tenant may appoint a person to act as an agent for the purposes of receiving any notice or other document on behalf of the tenant.
- (2) An appointment may be –
- (a) provided for in the residential tenancy agreement or made by the tenant at any other time; and
 - (b) revoked by the tenant at any time.
- (3) The appointment of an agent or the revocation of the appointment has no effect until the tenant notifies the owner.
- (4) If a tenant has appointed an agent, the owner is to give any notice or any other document required under this Act to the agent.
- (5) Any notice or other document given to an agent of the tenant is taken to have been given to the tenant.

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64. Certain provisions void

- (1) A provision of a residential tenancy agreement that purports to modify any provision of this Act has no effect.
- (2) A provision of any agreement, contract or other instrument that provides for the tenant to indemnify the owner for any loss or liability arising under this Act has no effect.
- (3) A provision of a residential tenancy agreement that imposes on a tenant a penalty or fine or a charge that exceeds the cost incurred by the owner of the residential premises has no effect.

64A. Mitigation of loss

The owner of residential premises –

- (a) is to take all reasonable measures to mitigate any loss or damage to the premises; and
- (b) is to take all reasonable measures to enter into a residential tenancy agreement in respect of the premises with another tenant as soon as possible after the early vacation of those premises or after those premises have been abandoned; and
- (c) is not entitled to be paid for any loss or damage that occurs because of the failure to take those measures.

64B. Keeping of pets

- (1) A tenant is not to keep a pet on residential premises –
 - (a) without permission of the owner of the premises; or
 - (b) unless permitted to do so under the residential tenancy agreement.
- (2) This section does not apply to a guide dog as defined by the *Guide Dogs and Hearing Dogs Act 1967*.

64C. Strata title property by-laws

The owner of residential premises that are a strata title lot is to give to a prospective tenant before entering into a residential tenancy agreement a copy of the by-laws made by the body corporate of the strata title property.

65. Regulations

- (1) The Governor may make regulations for the purpose of this Act.
- (1A) The regulations may provide that a prescribed provision of the Act does not apply to the following:
 - (a) any prescribed residential tenancy agreement or any prescribed provision of a prescribed residential tenancy agreement;

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- (b) any residential tenancy agreement of a prescribed class or any provision of a residential tenancy agreement of a prescribed class;
 - (c) any prescribed premises or part of prescribed premises;
 - (d) any premises or part of premises of a prescribed class.
- (1B) Without limiting the generality of subsection (1), the regulations may make provision for or in respect of –
- (a) the issue of infringement notices; and
 - (b) the offences under this Act in respect of which infringement notices may be issued; and
 - (c) the amount of the penalties payable under infringement notices; and
 - (d) all other matters relating to infringement notices.
- (2) Regulations may be made so as to apply differently according to any matter, condition, limitation, restriction, exception or circumstance specified in the regulations.
- (3) The regulations may –
- (a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and

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- (b) in respect of such an offence, provide for the imposition of a fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues.
- (4) The regulations may authorise any matter to be determined, applied or regulated by any person or body.
- (5) The regulations may confer a power and impose a duty on a specified person or a specified class of persons.
- (6) The regulations may impose fees and charges in relation to the determination of disputes and any other matter under this Act.
- (7) The regulations may adopt or incorporate the whole or any part of any document, standard, rule, code, specification or method, with or without modification, issued, prescribed or published by any person or body before or after the regulations take effect.

66. Regulations of savings and transitional nature

- (1) The Governor may make regulations of a savings or transitional nature consequent on the enactment of this Act or any Act amending this Act.
- (2) Regulations under subsection (1) may take effect from the day on which this Act, or any Act amending this Act, commences or a later day.

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67. Transitional provisions

Schedule 2 has effect with respect to savings and transitional matters.

67A. Transitional and savings provisions consequent on *Residential Tenancy Amendment Act 2011*

Schedule 2A has effect with respect to the transitional and savings matters consequent on the enactment of the *Residential Tenancy Amendment Act 2011*.

68. *See Schedule 3.*

68A. Transitional and savings provisions consequent on *Residential Tenancy Amendment Act 2010*

The amendments made by the *Residential Tenancy Amendment Act 2010* do not apply in respect of a residential tenancy agreement that was in force immediately before the day on which that Act commenced until 12 months after that day.

68B. General transitional, &c., provisions consequent on *Residential Tenancy Amendment Act 2013*

- (1) An amendment to this Act made by the amending Act applies in relation to all premises, and all residential tenancy agreements, except as otherwise provided for in this section or section 68C.

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- (2) If a residential tenancy agreement is entered into, or extended or renewed, before the amendments to section 11 made by the amending Act commence, those amendments –
 - (a) do not apply in relation to the agreement until 12 months after the amendments commence; and
 - (b) despite paragraph (a), do not apply in relation to an expiry of the agreement that occurs before 14 months after the amendments commence.
- (3) If a residential tenancy agreement is entered into, or extended or renewed, before the amendment to section 12 made by the amending Act commences, the amendment –
 - (a) does not apply in relation to the residential tenancy agreement until 12 months after the amendment commences; and
 - (b) despite paragraph (a), does not apply in relation to an expiry of the agreement that occurs before 14 months after the amendment commences.
- (4) Section 16B does not apply to an advertisement by or on behalf of an owner that is lodged for publication with another person before the section commences.
- (5) Section 17(3A) does not apply in relation to a residential tenancy agreement entered into, or extended or renewed, before that section

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commences, until 12 months after the section commences.

- (6) If a residential tenancy agreement is entered into, or extended or renewed, before the amendments to sections 20 and 23 made by the amending Act commence, those amendments do not apply in relation to the agreement until 12 months after the amendments commence.
- (7) If a residential tenancy agreement is entered into, or extended or renewed, before the amendments to section 39 made by the amending Act commence, those amendments –
 - (a) do not apply in relation to the agreement until 12 months after the amendments commence; and
 - (b) do not apply in relation to the expiry of the agreement if the expiry occurs within 14 months after the amendments commence.
- (8) If a residential tenancy agreement is entered into, or extended or renewed, before the amendments to sections 42, 43 and 45 made by the amending Act commence, the amendments –
 - (a) do not apply in relation to the agreement until 12 months after the amendments commence; and
 - (b) do not apply in relation to a notice to vacate issued before 12 months after the amendments commence.

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- (9) Section 49B does not apply in relation to the death of a tenant before that section commences.
- (10) If a residential tenancy agreement is entered into, or extended or renewed, before the amendments to section 57 made by the amending Act commence, those amendments (other than the amendment that inserts section 57(2A) and (2B)) do not apply in relation to the premises to which the agreement relates until 12 months after the amendments commence.
- (11) In this section –

amending Act means the *Residential Tenancy Amendment Act 2013*.

68C. Transitional, &c., provisions relating to new standards contained in *Residential Tenancy Amendment Act 2013*

- (1) If a residential tenancy agreement in relation to premises is entered into, or extended or renewed, before section 36I commences, that section does not apply in relation to the premises, for so long as the agreement remains in effect, until 3 years after the section commences.
- (2) If a residential tenancy agreement in relation to premises is entered into, or extended or renewed, after section 36I commences but before 12 months after that section commences, that section does not apply in relation to the premises, for so long as the agreement remains in effect, until 12 months after the section commences.

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- (3) Section 36J(1) does not apply in relation to a residential tenancy agreement if the agreement is entered into within 30 days after that provision commences.
- (4) If a residential tenancy agreement is entered into, or extended or renewed, before, or within 12 months after, section 36J(2) commences, section 36J(2) does not apply in relation to that entering into, extension or renewal.
- (5) If a residential tenancy agreement in relation to premises is entered into, or extended or renewed, before section 36J(3) commences, section 36J(3) does not apply in relation to the premises until 3 years after the section commences.
- (6) If a residential tenancy agreement in relation to premises is entered into, or extended or renewed, after section 36J(3) commences but before 12 months after that provision commences, that provision does not apply in relation to the premises until 12 months after the provision commences.
- (7) If a residential tenancy agreement is entered into, or extended or renewed, before section 36K, 36L, 36M, 36N or 36O commences, that section only applies in relation to a renewal or extension of the tenancy agreement that occurs after 3 years after the section commences.
- (8) If a residential tenancy agreement is entered into, or extended or renewed, within 12 months after section 36K, 36L, 36M, 36N or 36O commences, that section –

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- (a) does not apply to the entry into, or the extension or renewal of, the agreement; and
- (b) only applies in relation to a renewal or extension of the agreement that occurs after 3 years after the section commences.

69. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Justice; and
- (b) the Department responsible to the Minister for Justice in relation to the administration of this Act is the Department of Justice.

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**SCHEDULE 1 – VACATION OF, AND REMOVAL
FROM, OFFICE OF COMMISSIONER**

Section 7(3)

1. Vacation of office

The Commissioner vacates office if he or she –

- (a) dies; or
- (b) resigns; or
- (c) is removed from office under clause 2.

2. Removal from office

(1) The Minister may remove the Commissioner from office if the Commissioner –

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of any remuneration or estate for their benefit; or
- (b) has been convicted in Tasmania of any crime or offence punishable by imprisonment for 12 months or longer or elsewhere of any crime or offence which if committed in Tasmania would be punishable by imprisonment for 12 months or longer; or

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- (c) is convicted of an offence against this Act.
- (2) The Minister may remove the Commissioner from office if satisfied that the Commissioner –
- (a) is unable to perform adequately or competently the duties of office; or
 - (b) has neglected to perform those duties; or
 - (c) has been guilty of misconduct of such a nature that makes the Commissioner unsuitable to hold that office.

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**SCHEDULE 2 – SAVINGS AND TRANSITIONAL
PROVISIONS**

Section 67

1. Interpretation

In this Schedule

earlier Act means the *Landlord and Tenant Act 1935*.

2. Proceedings

Any proceedings related to residential premises instituted under the earlier Act and not determined before the commencement day may, on or after that day, be determined under the earlier Act.

3. Warrant

A warrant relating to residential premises under the earlier Act that is in force immediately before the commencement day and not executed before that day may be executed as if this Act had not commenced.

**SCHEDULE 2A – SECURITY DEPOSIT
TRANSITIONAL**

Section 67A

1. Retained security deposit to be paid to Authority

(1) In this clause –

2005 commencement date means the day on which the *Residential Tenancy Amendment Act 2005* commenced;

2011 commencement day means the day on which section 12 of the *Residential Tenancy Amendment Act 2011* commences;

pre-existing residential tenancy agreement means a residential tenancy agreement that was in force immediately before the 2005 commencement day.

(2) This clause applies to a security deposit that –

(a) was held by an owner in respect of a pre-existing residential tenancy agreement immediately before the 2005 commencement day; and

(b) is still held by the owner immediately before the 2011 commencement day.

(3) An owner who holds a security deposit to which this clause applies must deposit that money with the Authority within 40 working days after the 2011 commencement day unless the pre-existing

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residential tenancy agreement is earlier terminated.

Penalty: Fine not exceeding 50 penalty units.

SCHEDULE 3

The amendments effected by Section 68 and this Schedule have been incorporated into authorised versions of the following Acts:

- (a) *Auctioneers and Real Estate Agents Act 1991;*
- (b) *Consumer Affairs Act 1988;*
- (c) *Landlord and Tenant Act 1935;*
- (d) *Magistrates Court (Civil Division) Act 1992;*
- (e) *Magistrates Court (Small Claims Division) Act 1989.*

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NOTES

The foregoing text of the *Residential Tenancy Act 1997* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 17 November 2020 are not specifically referred to in the following table of amendments.

Act	Number and year	Date of commencement
<i>Residential Tenancy Act 1997</i>	No. 82 of 1997	1.7.1998
<i>Legislation Publication Act 1996</i>	No. 17 of 1996	24.1.2002
		Commencement generated under Legislation Publication Act
<i>Magistrates Court (Minor Civil Claims) Act 2003</i>	No. 53 of 2003	25.9.2003
<i>Residential Tenancy Amendment Act 2003</i>	No. 67 of 2003	1.2.2004 s. 6 5.3.2004 Remaining provisions
<i>Residential Tenancy Amendment (Boarding Premises) Act 2003</i>	No. 49 of 2003	25.8.2004
<i>Family Violence Act 2004</i>	No. 67 of 2004	30.3.2005
<i>Justice and Related Legislation (Miscellaneous Amendments) Act 2005</i>	No. 6 of 2005	6.5.2005
<i>Retirement Villages Act 2004</i>	No. 50 of 2004	1.7.2005
<i>Education and Training (Further Consequential Amendments) Act 2008</i>	No. 45 of 2008	1.1.2009
<i>Residential Tenancy Amendment Act 2005</i>	No. 59 of 2005	1.7.2009
<i>Justice and Related Legislation (Further Miscellaneous Amendments) Act 2009</i>	No. 76 of 2009	1.7.2009
<i>Residential Tenancy Amendment Act 2010</i>	No. 33 of 2010	3.12.2010
<i>Residential Tenancy Amendment Act 2011</i>	No. 35 of 2011	1.1.2012
<i>Residential Tenancy Amendment</i>	No. 28 of 2012	1.5.2013

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Act	Number and year	Date of commencement
<i>(Smoke Alarms) Act 2012</i>		
<i>Training and Workforce Development (Repeals and Consequential Amendments) Act 2013</i>	No. 11 of 2013	1.7.2013
<i>Residential Tenancy Amendment Act 2013</i>	No. 45 of 2013	1.10.2014
<i>Residential Tenancy Amendment Act 2015</i>	No. 16 of 2015	17.6.2015
<i>Residential Tenancy Amendment Act 2013</i>	No. 45 of 2013	1.8.2015
<i>Homes Amendment Act 2016</i>	No. 6 of 2016	13.5.2016
<i>Property Agents and Land Transactions Act 2016</i>	No. 58 of 2016	1.4.2017
<i>Justice and Related Legislation (Miscellaneous Amendments) Act 2017</i>	No. 29 of 2017	5.9.2017
<i>Domestic Violence Orders (National Recognition) Act 2016</i>	No. 29 of 2016	25.11.2017
<i>Residential Tenancy Amendment Act 2018</i>	No. 38 of 2018	31.3.2019
<i>Financial Management (Consequential and Transitional Provisions) Act 2017</i>	No. 4 of 2017	1.7.2019
<i>COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020</i>	No. 11 of 2020	27.3.2020
<i>Residential Tenancy Amendment (COVID-19) Act 2020</i>	No. 30 of 2020	17.11.2020

TABLE OF AMENDMENTS

Provision affected	How affected
Section 3	Amended by No. 17 of 1996, No. 49 of 2003, s. 4, No. 53 of 2003, Sched. 1, No. 67 of 2003, s. 4, No. 59 of 2005, s. 4, No. 45 of 2008, Sched. 1, No. 33 of 2010, s. 4, No. 35 of 2011, s. 4, No. 11 of 2013, Sched. 1, No. 45 of 2013, s. 4, No. 38 of 2018, s. 4, No. 11 of 2020, Sched. 2 and No. 30 of 2020, s. 4
Section 3A	Inserted by No. 11 of 2020, Sched. 2
Section 3B	Inserted by No. 30 of 2020, s. 5
Section 5	Amended by No. 49 of 2003, s. 5 and No. 33 of 2010, s. 5
Section 6	Amended by No. 49 of 2003, s. 6, No. 67 of 2003, s. 5, No. 50 of 2004, s. 47, No. 33 of 2010, s. 6, No. 45 of 2013, s. 5, No. 6 of 2016, s. 57 and No. 38 of 2018, s. 5
Section 8	Amended by No. 49 of 2003, s. 7, No. 35 of 2011, s. 5 and

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Provision affected	How affected
	No. 45 of 2013, s. 6
Section 10	Amended by No. 45 of 2013, s. 7 and No. 6 of 2016, s. 58
Section 11	Amended by No. 45 of 2013, s. 8 and No. 38 of 2018, s. 6
Section 12	Amended by No. 45 of 2013, s. 9
Section 12A	Inserted by No. 11 of 2020, Sched. 2
Section 14	Amended by No. 17 of 1996 and No. 49 of 2003, s. 8
Section 16	Amended by No. 53 of 2003, Sched. 1
Section 16A of Part 3	Inserted by No. 33 of 2010, s. 7
Section 16A	Amended by No. 45 of 2013, s. 10
Section 16B	Inserted by No. 45 of 2013, s. 11
Section 17	Substituted by No. 67 of 2003, s. 6 Amended by No. 76 of 2009, s. 29, No. 45 of 2013, s. 12 and No. 38 of 2018, s. 7
Section 19	Amended by No. 49 of 2003, s. 9 and No. 67 of 2003, s. 7
Section 20	Amended by No. 53 of 2003, Sched. 1, No. 45 of 2013, s. 13 and No. 38 of 2018, s. 8
Section 21	Amended by No. 49 of 2003, s. 10
Section 23	Amended by No. 53 of 2003, Sched. 1 and No. 45 of 2013, s. 14
Section 24	Substituted by No. 67 of 2003, s. 8
Section 24A	Inserted by No. 30 of 2020, s. 6
Section 24B	Inserted by No. 30 of 2020, s. 6
Section 25	Amended by No. 49 of 2003, s. 11 Substituted by No. 59 of 2005, s. 5 Amended by No. 35 of 2011, s. 6, No. 58 of 2016, Sched. 4, No. 29 of 2017, Sched. 1 and No. 38 of 2018, s. 9
Section 26	Amended by No. 59 of 2005, s. 6
Section 27	Substituted by No. 67 of 2003, s. 9, No. 59 of 2005, s. 7, No. 33 of 2010, s. 8 and No. 35 of 2011, s. 7
Section 28	Amended by No. 67 of 2003, s. 10 Substituted by No. 59 of 2005, s. 7
Section 29	Amended by No. 67 of 2003, s. 11 Subsection (3) inserted by No. 67 of 2003, s. 11 Subsection (4) inserted by No. 67 of 2003, s. 11 Subsection (5) inserted by No. 67 of 2003, s. 11 Substituted by No. 59 of 2005, s. 7
Section 29A	Inserted by No. 59 of 2005, s. 7
Section 29B	Inserted by No. 59 of 2005, s. 7 Amended by No. 33 of 2010, s. 9
Section 29C	Inserted by No. 59 of 2005, s. 7
Section 29D	Inserted by No. 59 of 2005, s. 7 Amended by No. 33 of 2010, s. 10
Section 29DA	Inserted by No. 33 of 2010, s. 11
Section 29E	Inserted by No. 59 of 2005, s. 7
Section 29F	Inserted by No. 59 of 2005, s. 7
Section 29G	Inserted by No. 59 of 2005, s. 7
Section 30	Amended by No. 53 of 2003, Sched. 1 and No. 59 of 2005,

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	s. 8
Section 30A	Inserted by No. 59 of 2005, s. 9
Section 31A	Inserted by No. 45 of 2013, s. 15
Section 32	Amended by No. 49 of 2003, s. 12, No. 53 of 2003, Sched. 1, No. 67 of 2003, s. 12, No. 45 of 2013, s. 16, No. 11 of 2020, Sched. 2 and No. 30 of 2020, s. 7
Section 33	Amended by No. 49 of 2003, s. 13, No. 67 of 2003, s. 13 and No. 45 of 2013, s. 17
Section 34	Amended by No. 49 of 2003, s. 14 and No. 67 of 2003, s. 14
Section 35	Amended by No. 49 of 2003, s. 15
Section 36	Amended by No. 49 of 2003, s. 16 and No. 53 of 2003, Sched. 1
Section 36A	Inserted by No. 67 of 2003, s. 15 Substituted by No. 45 of 2013, s. 18
Section 36B	Inserted by No. 28 of 2012, s. 4
Section 36C	Inserted by No. 28 of 2012, s. 4
Section 36D	Inserted by No. 28 of 2012, s. 4
Section 36E	Inserted by No. 28 of 2012, s. 4
Section 36F	Inserted by No. 28 of 2012, s. 4
Section 36G	Inserted by No. 28 of 2012, s. 4
Section 36H	Inserted by No. 28 of 2012, s. 4
Section 36I	Inserted by No. 45 of 2013, s. 19
Section 36J	Inserted by No. 45 of 2013, s. 19
Section 36K	Inserted by No. 45 of 2013, s. 19
Section 36L	Inserted by No. 45 of 2013, s. 19
Section 36M	Inserted by No. 45 of 2013, s. 19
Section 36N	Inserted by No. 45 of 2013, s. 19
Section 36O	Inserted by No. 45 of 2013, s. 19
Section 36P	Inserted by No. 45 of 2013, s. 19
Section 37	Amended by No. 53 of 2003, Sched. 1, No. 67 of 2003, s. 16, No. 67 of 2004, Sched. 1, No. 45 of 2013, s. 20 and No. 11 of 2020, Sched. 2
Section 38A	Inserted by No. 11 of 2020, Sched. 2
Section 38B	Inserted by No. 11 of 2020, Sched. 2
Section 39	Amended by No. 49 of 2003, s. 17, No. 67 of 2003, s. 17, No. 45 of 2013, s. 21 and No. 16 of 2015, s. 4
Section 40	Substituted by No. 49 of 2003, s. 18
Section 41	Amended by No. 53 of 2003, Sched. 1 and No. 67 of 2003, s. 18
Section 42	Amended by No. 67 of 2003, s. 19, No. 6 of 2005, s. 38, No. 45 of 2013, s. 22, No. 6 of 2016, s. 59, No. 11 of 2020, Sched. 2 and No. 30 of 2020, s. 8
Section 43	Amended by No. 67 of 2003, s. 20, No. 6 of 2005, s. 39, No. 45 of 2013, s. 23, No. 6 of 2016, s. 60 and No. 30 of 2020, s. 9
Section 45	Amended by No. 53 of 2003, Sched. 1, No. 67 of 2003, s. 21 and No. 45 of 2013, s. 24

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Provision affected	How affected
Section 46	Amended by No. 53 of 2003, Sched. 1 Substituted by No. 67 of 2003, s. 22
Section 47	Amended by No. 53 of 2003, Sched. 1 Substituted by No. 67 of 2003, s. 22
Section 47A	Inserted by No. 67 of 2003, s. 22
Section 47B	Inserted by No. 67 of 2003, s. 22
Section 47C	Inserted by No. 67 of 2003, s. 22
Section 48	Amended by No. 53 of 2003, Sched. 1
Section 48A	Inserted by No. 49 of 2003, s. 19
Section 48B	Inserted by No. 49 of 2003, s. 19
Section 48C	Inserted by No. 49 of 2003, s. 19
Section 48D	Inserted by No. 49 of 2003, s. 19
Section 48E	Inserted by No. 49 of 2003, s. 19
Section 48F	Inserted by No. 49 of 2003, s. 19
Section 48G	Inserted by No. 49 of 2003, s. 19
Section 48H	Inserted by No. 49 of 2003, s. 19
Section 48I	Inserted by No. 49 of 2003, s. 19
Section 48J	Inserted by No. 49 of 2003, s. 19
Section 48K	Inserted by No. 59 of 2005, s. 10
Section 48L	Inserted by No. 59 of 2005, s. 10
Section 48M	Inserted by No. 59 of 2005, s. 10
Section 48N	Inserted by No. 59 of 2005, s. 10
Section 48O	Inserted by No. 59 of 2005, s. 10
Section 48P	Inserted by No. 59 of 2005, s. 10
Section 48Q	Inserted by No. 59 of 2005, s. 10
Section 48R	Inserted by No. 59 of 2005, s. 10 Amended by No. 4 of 2017, Sched. 1
Section 48S	Inserted by No. 59 of 2005, s. 10
Section 48T	Inserted by No. 59 of 2005, s. 10
Section 48U	Inserted by No. 35 of 2011, s. 8
Section 48V	Inserted by No. 35 of 2011, s. 8
Section 48W	Inserted by No. 35 of 2011, s. 8
Section 48X	Inserted by No. 35 of 2011, s. 8
Section 48Y	Inserted by No. 35 of 2011, s. 8
Section 48Z	Inserted by No. 35 of 2011, s. 8
Section 48ZA	Inserted by No. 35 of 2011, s. 8
Section 48ZB	Inserted by No. 35 of 2011, s. 8
Section 48ZC	Inserted by No. 35 of 2011, s. 8
Section 48ZD	Inserted by No. 35 of 2011, s. 8
Section 48ZE	Inserted by No. 35 of 2011, s. 8
Section 48ZF	Inserted by No. 35 of 2011, s. 8
Section 49	Amended by No. 33 of 2010, s. 12, No. 35 of 2011, s. 9 and No. 6 of 2016, s. 61
Section 49A	Inserted by No. 35 of 2011, s. 10
Section 49B	Inserted by No. 45 of 2013, s. 25
Section 50	Amended by No. 17 of 1996
Section 53	Amended by No. 11 of 2020, Sched. 2
Section 55A	Inserted by No. 45 of 2013, s. 26

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Provision affected	How affected
Section 56	Amended by No. 49 of 2003, s. 20, No. 67 of 2003, s. 23, No. 11 of 2020, Sched. 2 and No. 30 of 2020, s. 10
Section 57	Amended by No. 49 of 2003, s. 21, No. 53 of 2003, Sched. 1, No. 67 of 2003, s. 24, No. 45 of 2013, s. 27, No. 16 of 2015, s. 5 and No. 29 of 2016, Sched. 1
Section 62	Amended by No. 49 of 2003, s. 22 and No. 45 of 2013, s. 28
Section 64	Amended by No. 67 of 2003, s. 25
Section 64A	Inserted by No. 67 of 2003, s. 26
Section 64B	Inserted by No. 67 of 2003, s. 26
Section 64C	Inserted by No. 67 of 2003, s. 26
Section 65	Amended by No. 67 of 2003, s. 27 and No. 59 of 2005, s. 11
Section 66	Amended by No. 59 of 2005, s. 12
Section 67A	Inserted by No. 59 of 2005, s. 13 Substituted by No. 35 of 2011, s. 11
Section 68A	Inserted by No. 33 of 2010, s. 13
Section 68B	Inserted by No. 45 of 2013, s. 29
Section 68C	Inserted by No. 45 of 2013, s. 29
Schedule 2A	Inserted by No. 59 of 2005, s. 14 Substituted by No. 35 of 2011, s. 12
