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Authorised Version No. 090
Residential Tenancies Act 1997
No. 109 of 1997

Authorised Version incorporating amendments as at
2 March 2020

The Parliament of Victoria enacts as follows:

Part 1—Preliminary

Division 1—Introductory provisions

1 Purposes

The main purposes of this Act are—

- (a) to define the rights and duties of landlords and tenants of rented premises; and
- (b) to define the rights and duties of rooming house owners and residents of rooming houses; and
- (c) to define the rights and duties of caravan park owners, caravan owners and residents of caravan parks; and
- (d) to provide for the inexpensive and quick resolution of disputes under this Act; and
- (e) to provide for the establishment of the Rooming House Register; and
- (f) to provide for a centralised system for the administration of bonds; and
- (g) to provide for the establishment of the Residential Tenancies Bond Authority; and

S. 1(e)
repealed by
No. 52/1998
s. 235(1),
new s. 1(e)
inserted by
No. 56/2012
s. 13.

Residential Tenancies Act 1997
No. 109 of 1997
Part 1—Preliminary

S. 1(h)
amended by
No. 67/2010
s. 4(a).

(h) to provide for the regulation of caravan parks and movable dwellings; and

S. 1(i)
inserted by
No. 67/2010
s. 4(b),
amended by
No. 38/2018
s. 294(a).

(i) to provide for the regulation of agreements between site owners and site tenants in respect of Part 4A sites and Part 4A dwellings; and

S. 1(j)
inserted by
No. 38/2018
s. 294(b).

(j) to define the rights and duties of SDA providers and SDA residents in respect of SDA enrolled dwellings.

2 Commencement

- (1) Part 1 comes into operation on the day on which this Act receives the Royal Assent.
- (2) Subject to subsection (3), the remaining provisions of this Act come into operation on a day or days to be proclaimed.
- (3) If a provision referred to in subsection (2) does not come into operation before 1 January 1999, it comes into operation on that day.

3 Definitions

- (1) In this Act—

S. 3(1) def. of
annexe
inserted by
No. 67/2010
s. 5(1).

annexe means a movable dwelling that—

- (a) is attached to a registrable movable dwelling or unregistrable movable dwelling; and
- (b) extends the habitable area of that dwelling;

S. 3(1) def. of
A rating
repealed by
No. 32/2010
s. 78(1).

* * * * *

Authority means the Residential Tenancies Bond Authority established under this Act;

bond means—

S. 3(1) def. of
bond
amended by
No. 67/2010
s. 5(2).

- (a) an amount paid or payable by a tenant to secure his or her performance and observance of the tenancy agreement or any of the provisions of this Act relating to the tenancy agreement; or
- (b) an amount paid or payable by a resident to secure his or her performance and observance of any agreement relating to the residency or of any of the provisions of this Act relating to the residency; or
- (c) an amount paid or payable by a site tenant to secure his or her performance and observance of the site agreement or any of the provisions of this Act relating to the site agreement;

Building Appeals Board means the Building Appeals Board under the **Building Act 1993**;

business day means a day other than a Saturday, Sunday or public holiday;

caravan means—

- (a) a movable dwelling; or
- (b) an immovable dwelling situated in a caravan park—

but, except in Part 14, does not include such a dwelling occupied in pursuance of a contract of employment;

caravan park means an area of land on which movable dwellings are situated for occupation on payment of consideration,

whether or not immovable dwellings are also situated there;

caravan park owner means any person who is (either wholly or partly) the owner of a business which operates a caravan park;

caravan park provisions means any provisions of this Act to the extent to which they apply to a caravan park, a resident of a caravan park, a caravan park owner, a caravan owner, a caravan park mortgagee or a caravan mortgagee, but does not include Part 14;

S. 3(1) def. of *common area* amended by No. 67/2010 s. 5(3).

common area means any area in which facilities are provided for the use of tenants, residents or site tenants otherwise than as part of the rented premises, room, site or Part 4A site;

S. 3(1) def. of *Council* inserted by No. 56/2012 s. 14.

Council has the same meaning as in section 3(1) of the **Local Government Act 1989**;

determination in relation to the Tribunal—

- (a) includes order, direction, decision or declaration; and
- (b) if a determination is varied under this Act, includes that determination as varied;

S. 3(1) def. of *Director* substituted by Nos 46/1998 s. 7(Sch. 1), 17/1999 s. 41(1), amended by No. 21/2012 s. 239(Sch. 6 item 36.1).

Director means the Director within the meaning of the **Australian Consumer Law and Fair Trading Act 2012**;

Director of Housing means the Director of Housing incorporated under the **Housing Act 1983**;

domestic partner of a person means—

- (a) a person who is in a registered relationship with the person; or
- (b) a person to whom the person is not married but with whom the person is living as a couple on a genuine domestic basis (irrespective of gender);

S. 3(1) def. of *domestic partner* inserted by No. 27/2001 s. 3(Sch. 1 item 10.1), substituted by No. 12/2008 s. 73(1)(Sch. 1 item 51.1).

dwelling means any structure that is designed to be used for human habitation and that is capable of being so used, and includes a motor vehicle or trailer that is so designed and capable;

eligible resident means a resident of a caravan park who owns a dwelling affixed to a site in the caravan park other than an annexe but does not include a resident who only owns a registrable movable dwelling;

S. 3(1) def. of *eligible resident* inserted by No. 45/2018 s. 5(6).

eligible site tenant means a site tenant who owns a Part 4A dwelling;

S. 3(1) def. of *eligible site tenant* inserted by No. 45/2018 s. 5(6).

exclusion condition means—

- (a) an exclusion condition included in a family violence safety notice under section 29 of the **Family Violence Protection Act 2008**; or
- (b) an exclusion condition included in a family violence intervention order under section 82 of that Act; or
- (c) a condition that corresponds to an exclusion condition referred to in paragraph (a) or (b), included in a non-local DVO that is a recognised DVO; or

S. 3(1) def. of *exclusion condition* inserted by No. 52/2008 s. 257, amended by No. 53/2010 s. 221(Sch. item 9.1), substituted by No. 53/2016 s. 116(b).

- (d) an exclusion condition included in a personal safety intervention order under section 67 of the **Personal Safety Intervention Orders Act 2010**;

S. 3(1) def. of *exclusive occupancy right* inserted by No. 63/2005 s. 4(a).

exclusive occupancy right, in relation to a room or rooming house, means a residency right of a kind set out in section 92A;

S. 3(1) def. of *facilities* amended by No. 67/2010 s. 5(4).

facilities means—

- (a) land or buildings intended for use for storage space or car parking;
- (b) laundry facilities;
- (c) cooking facilities;
- (d) recreational areas;
- (e) lifts;
- (f) garbage storage and disposal facilities;
- (g) bathroom, toilet and washing facilities;
- (h) appliances for heating or cooling premises;
- (i) communications facilities;
- (j) lawns, gardens and outhouses;
- (k) stairways;
- (l) any area designed or set aside for common use by tenants, residents or site tenants—

provided for the use of a tenant, resident or site tenant otherwise than as part of the rented premises, room, site or Part 4A site;

family violence intervention order and *family violence safety notice* have the meanings given by the **Family Violence Protection Act 2008**;

S. 3(1) defs of *family violence intervention order* and *family violence safety notice* inserted by No. 52/2008 s. 257.

fixed term site agreement means a site agreement for a fixed term;

S. 3(1) def. of *fixed term site agreement* inserted by No. 67/2010 s. 5(1).

fixed term tenancy agreement means a tenancy agreement for a fixed term including, in the case of a fixed term tenancy agreement for more than 5 years, any extension of that tenancy agreement exercised in accordance with a term permitting the extension of that tenancy at the end of the fixed term;

S. 3(1) def. of *fixed term tenancy agreement* amended by No. 40/2018 s. 4(2).

GST has the same meaning as it has in the A New Tax System (Goods and Services Tax) Act 1999 of the Commonwealth except that it includes notional GST of the kind for which payments may be made under Part 3 of the **National Taxation Reform (Consequential Provisions) Act 2000** by a person that is a State entity within the meaning of that Act;

S. 3(1) def. of *GST* inserted by No. 67/2010 s. 166.

guarantee includes indemnity;

S. 3(1) def. of
*health or
residential
service*
amended by
Nos 48/2006
s. 42(Sch.
item 30),
23/2006,
s. 248(1),
49/2010 s. 231,
26/2014
s. 455(Sch.
item 25),
38/2018
s. 295(2)(a)(b).

health or residential service means—

- (a) a residential care service, State funded residential care service, health service establishment, denominational hospital or public hospital within the meaning of the **Health Services Act 1988**; or
- (b) premises used for a designated mental health service within the meaning of the **Mental Health Act 2014**; or
- (c) premises used for a residential service within the meaning of the **Disability Act 2006**; or
- (d) premises used for a secure welfare service within the meaning of the **Children, Youth and Families Act 2005**; or
- (e) premises where accommodation is provided by a service agency for the purpose of delivering support services by that agency to a client of that agency; or
- (f) premises used for a supported residential service within the meaning of the **Supported Residential Services (Private Proprietors) Act 2010**—

but does not include premises used for specialist disability accommodation that is an SDA enrolled dwelling;

S. 3(1) def. of
hearing
repealed by
No. 52/1998
s. 235(2)(a).

* * * * *

hiring charge means the amount paid by a resident to a caravan owner to occupy a caravan;

invalid in relation to an agreement or guarantee,
means void;

landlord means—

- (a) the person by whom premises are let
under a tenancy agreement; or
- (b) the person by whom the premises are to
be let under a proposed tenancy
agreement;

motor vehicle means a motor vehicle within the
meaning of the **Road Safety Act 1986**;

movable dwelling means a dwelling that is
designed to be movable, but does not include
a dwelling that cannot be situated at and
removed from a place within 24 hours;

NDIA has the same meaning as it has in
section 498B;

S. 3(1) def. of
NDIA
inserted by
No. 38/2018
s. 295(1).

NDIS has the same meaning as it has in
section 498B;

S. 3(1) def. of
NDIS
inserted by
No. 38/2018
s. 295(1).

non-local DVO means a non-local DVO within
the meaning of the **National Domestic
Violence Order Scheme Act 2016**;

S. 3(1) def. of
*non-local
DVO*
inserted by
No. 53/2016
s. 116(a).

owner in relation to rented premises, means the
owner in fee simple of the premises;

park closure compensation order means an order
made by the Tribunal under section 215B;

S. 3(1) def. of
*park closure
compensation order*
inserted by
No. 45/2018
s. 5(6).

S. 3(1) def. of
Part 4A
dwelling
inserted by
No. 67/2010
s. 5(1).

Part 4A dwelling means a dwelling fully or partially owned by a site tenant—

- (a) designed, built or manufactured to be transported from one place to another for use as a residence; or
- (b) any other prescribed Part 4A dwelling—

but does not include—

- (c) a registrable movable dwelling; or
- (d) a registrable movable dwelling with an annexe attached; or
- (e) a dwelling that was previously a registrable movable dwelling but that has been modified to the extent that it no longer satisfies the definition of a registrable movable dwelling, unless it was so modified before the commencement of section 5 of the **Residential Tenancies Amendment Act 2010**;

S. 3(1) def. of
Part 4A park
inserted by
No. 67/2010
s. 5(1).

Part 4A park means an area of land where—

- (a) sites of land are available for occupation under a site agreement; and
- (b) Part 4A dwellings may be situated on those sites; and
- (c) common areas or facilities are available for the use of a person occupying a Part 4A site—

and includes a caravan park if the caravan park contains Part 4A sites;

S. 3(1) def. of
Part 4A site
inserted by
No. 67/2010
s. 5(1).

Part 4A site means a site that is available for occupation under a site agreement;

partner of a person means the person's spouse or domestic partner;

S. 3(1) def. of *partner* inserted by No. 27/2001 s. 3(Sch. 1 item 10.1).

periodic site agreement means a site agreement other than a fixed term site agreement;

S. 3(1) def. of *periodic site agreement* inserted by No. 67/2010 s. 5(1).

periodic tenancy agreement means a tenancy agreement other than a fixed term tenancy agreement;

personal documents means—

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

personal safety intervention order has the meaning given by the **Personal Safety Intervention Orders Act 2010**;

S. 3(1) def. of *personal safety intervention order* inserted by No. 53/2010 s. 221(Sch. item 9.2).

pet means any animal other than an assistance dog within the meaning of the **Equal Opportunity Act 2010**;

S. 3(1) def. of *pet* inserted by No. 47/2019 s. 46.

police officer has the same meaning as in the **Victoria Police Act 2013**;

S. 3(1) def. of *police officer* inserted by No. 37/2014 s. 10(Sch. item 144.1).

S. 3(1) def. of
*prescribed
rating system*
inserted by
No. 32/2010
s. 78(2).

prescribed rating system, in relation to water appliances, fixtures and fittings, means a system of rating the water efficiency of water appliances, fixtures and fittings that is prescribed;

S. 3(1) def. of
*principal
registrar*
inserted by
No. 52/1998
s. 235(2)(b).

principal registrar means principal registrar of the Tribunal;

S. 3(1) def. of
proprietor
inserted by
No. 56/2012
s. 14.

proprietor, in relation to a rooming house, means a person providing prescribed accommodation within the meaning of the **Public Health and Wellbeing Act 2008**, where the prescribed accommodation is a rooming house;

S. 3(1) def. of
*Public
Advocate*
inserted by
No. 38/2018
s. 295(1).

Public Advocate has the same meaning as in the **Disability Act 2006**;

S. 3(1) def. of
*public
statutory
authority*
amended by
No. 23/2016
s. 26(1).

public statutory authority means an office or body corporate or unincorporate established by or under an Act for a public purpose and includes a Council;

S. 3(1) def. of
*recognised
DVO*
inserted by
No. 53/2016
s. 116(a).

recognised DVO means a recognised DVO within the meaning of the **National Domestic Violence Order Scheme Act 2016**;

S. 3(1) def. of
*registered
rooming
house*
inserted by
No. 56/2012
s. 14.

registered rooming house means a rooming house registered in accordance with Division 4 of Part 6 of the **Public Health and Wellbeing Act 2008** because it is prescribed accommodation within the meaning of that Act;

registrable movable dwelling means a movable dwelling that is or has been registered or is required to be registered under the **Road Safety Act 1986**;

S. 3(1) def. of *registrable movable dwelling* inserted by No. 67/2010 s. 5(1).

* * * * *

S. 3(1) def. of *Registrar* repealed by No. 52/1998 s. 235(2)(c).

rent (except in Part 12A) means—

S. 3(1) def. of *rent* amended by Nos 63/2005 s. 4(b), 67/2010 s. 5(5), 38/2018 s. 295(2)(c).

- (a) in relation to a tenancy agreement, the amount paid to a landlord by a tenant to occupy rented premises and use facilities and services; or
- (b) in relation to the residency of a rooming house, the amount paid to a rooming house owner by a resident to occupy a room and use facilities and services; or
- (c) in relation to the residency of a caravan park, the amount paid to a caravan park owner by a resident to occupy a site and use facilities and services; or
- (d) in relation to a site agreement, the amount paid to a site owner by a site tenant to occupy a Part 4A site and use facilities and services—

but does not include any amount for which a tenant or resident is liable under section 52, 57, 108, 109A, 162 or 206ZE;

Rent Special Account means the Rent Special Account established under section 485;

rented premises in relation to a tenancy agreement to which this Act applies means the premises let under the tenancy agreement;

residency right means—

- (a) in relation to a room or rooming house, a right conferred by section 92; or
- (b) in relation to a site or caravan in a caravan park or a caravan park, a right conferred by section 143;

S. 3(1) def. of
resident
amended by
Nos 63/2005
s. 4(c),
67/2010
s. 5(6).

resident means—

- (a) in relation to a rooming house, a person who, with the agreement of the rooming house owner, occupies a room as his or her only or main residence; or
- (b) in relation to a caravan park, a person (other than a site tenant) who occupies a site in the caravan park as his or her only or main residence and—
 - (i) who has obtained the prior written agreement of the caravan park owner to do so (whether that agreement was given in respect of that site or another site in the caravan park); or
 - (ii) who has so occupied any site in the caravan park for at least 60 consecutive days;

Residential Tenancies Fund means the Residential Tenancies Fund established under this Act;

room means a room in a building, where the room is occupied or intended to be occupied for the purpose of a residence by a person having a right to occupy the room together with a right to use in common with others any facilities in the building but does not include a self-contained apartment;

room capacity means the number of persons who may be accommodated in a room;

S. 3(1) def. of *room capacity* inserted by No. 63/2005 s. 4(a).

rooming house means a building, other than an SDA enrolled dwelling, in which there is one or more rooms available for occupancy on payment of rent—

S. 3(1) def. of *rooming house* amended by Nos 45/2002 s. 27(1), 38/2018 s. 295(2)(d).

(a) in which the total number of people who may occupy those rooms is not less than 4; or

(b) in respect of which a declaration under section 19(2) or (3) is in force;

rooming house owner in relation to a rooming house which is leased to a person who conducts the business of operating the rooming house, includes the lessee;

rooming house provisions means any provisions of this Act to the extent to which they apply to a room, a rooming house, a resident of a room in a rooming house, a rooming house owner or a rooming house mortgagee;

Rooming House Register means the register of rooming houses established under section 142E;

S. 3(1) def. of *Rooming House Register* inserted by No. 56/2012 s. 14.

rooming house standard means a standard prescribed under section 142C for the purposes of Division 8 of Part 3;

S. 3(1) def. of *rooming house standard* inserted by No. 56/2012 s. 3.

S. 3(1) def. of
*SDA enrolled
dwelling*
inserted by
No. 38/2018
s. 295(1).

SDA enrolled dwelling means a permanent dwelling—

- (a) that provides long-term accommodation for one or more SDA residents; and
- (b) that is enrolled as an SDA dwelling under the National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2016 of the Commonwealth as in force from time to time or under other rules made under the National Disability Insurance Scheme Act 2013 of the Commonwealth; and
- (c) that may comprise of—
 - (i) an area or room exclusively occupied by an SDA resident and common areas shared by other SDA residents under an SDA residency agreement; or
 - (ii) the dwelling as a whole occupied exclusively by an SDA resident under an SDA residency agreement; or
 - (iii) the dwelling as a whole occupied under a tenancy agreement by at least one SDA resident and other occupants who may or may not be SDA residents;

S. 3(1) def. of
SDA provider
inserted by
No. 38/2018
s. 295(1).

SDA provider has the same meaning as it has in section 498B;

SDA residency agreement has the same meaning as it has in section 498B;

S. 3(1) def. of *SDA residency agreement* inserted by No. 38/2018 s. 295(1).

SDA resident has the same meaning as it has in section 498B;

S. 3(1) def. of *SDA resident* inserted by No. 38/2018 s. 295(1).

SDA resident's administrator has the same meaning as it has in section 498B;

S. 3(1) def. of *SDA resident's administrator* inserted by No. 38/2018 s. 295(1).

SDA resident's guardian has the same meaning as it has in section 498B;

S. 3(1) def. of *SDA resident's guardian* inserted by No. 38/2018 s. 295(1).

self-contained apartment means a portion of a building which forms a self-contained residence, including kitchen and bathroom and toilet facilities, under the exclusive possession of the occupier;

separately metered means that there is, in respect of rented premises, a room or a site, a meter—

S. 3(1) def. of *separately metered* amended by No. 45/2002 s. 86.

- (a) that has been installed or approved by the relevant supplier of the utility; and
- (b) that measures, in relation to those premises or that room or site only, the quantity of a substance or service that is supplied to, or used at, those premises or that room or site;

S. 3(1) def. of
*service
agency*
substituted by
No. 23/2006
s. 248(2).

service agency means a disability service provider within the meaning of the **Disability Act 2006**;

services includes the provision to a resident by a rooming house owner of meals, linen or room cleaning services;

S. 3(1) def. of
shared room
inserted by
No. 63/2005
s. 4(a).

shared room means a room that is occupied by one or more residents with shared room rights;

S. 3(1) def. of
*shared room
right*
inserted by
No. 63/2005
s. 4(a).

shared room right means a residency right of a kind set out in section 92B;

site means a site in a caravan park;

S. 3(1) def. of
*site
agreement*
inserted by
No. 67/2010
s. 5(1).

site agreement means an agreement under which a person lets land as a Part 4A site for the purposes of the occupation of a Part 4A dwelling on that land by the Part 4A dwelling owner as a residence;

S. 3(1) def. of
*site
agreement
provisions*
inserted by
No. 67/2010
s. 5(1).

site agreement provisions means any provisions of this Act to the extent to which they apply to a Part 4A site, a Part 4A dwelling, a site owner or a site tenant;

S. 3(1) def. of
site owner
inserted by
No. 67/2010
s. 5(1).

site owner means the person by whom a Part 4A site—

- (a) is let under a site agreement; or
- (b) is to be let under a proposed site agreement;

site tenant means the person to whom a Part 4A site—

S. 3(1) def. of *site tenant* inserted by No. 67/2010 s. 5(1).

- (a) is let under a site agreement; or
- (b) is to be let under a proposed site agreement;

solar energy system means—

S. 3(1) def. of *solar energy system* inserted by No. 47/2019 s. 91.

- (a) solar photovoltaic system;
- (b) solar hot water system;
- (c) solar battery system;
- (d) any combination of a system or systems referred to in paragraphs (a) to (c);
- (e) any ancillary equipment related to a system referred to in paragraphs (a) to (d);

Solar Homes Program means the program administered by the Minister administering section 8 of the **Renewable Energy (Jobs and Investment) Act 2017** under which rebates or loans or both rebates and loans are provided for the installation of any solar energy system;

S. 3(1) def. of *Solar Homes Program* inserted by No. 47/2019 s. 91.

spouse of a person means a person to whom the person is married;

S. 3(1) def. of *spouse* inserted by No. 27/2001 s. 3(Sch. 1 item 10.1).

standard form tenancy agreement means—

S. 3(1) def. of *standard form tenancy agreement* inserted by No. 40/2018 s. 4(1).

- (a) in relation to a tenancy agreement for a fixed term not exceeding 5 years, the standard form prescribed for the purposes of section 26(1);
- (b) in relation to a tenancy agreement for a fixed term of more than 5 years,

the standard form prescribed for the purposes of section 26(1A)(b)(ii);

support services means—

- (a) assistance with one or more of the following—
 - (i) bathing, showering or personal hygiene; or
 - (ii) toileting; or
 - (iii) dressing or undressing; or
 - (iv) meals; or
- (b) physical assistance for persons with mobility problems; or
- (c) assistance for persons who are mobile but require some form of supervision or assistance; or
- (d) development of independent living skills;

S. 3(1) def. of *temporary crisis accommodation* inserted by No. 45/2002 s. 4.

temporary crisis accommodation means accommodation provided on a non-profit basis for a period of less than 14 days;

S. 3(1) def. of *tenancy agreement* amended by No. 38/2018 s. 295(2)(e).

tenancy agreement means an agreement, whether or not in writing and whether express or implied, under which a person lets premises as a residence, but does not include an SDA residency agreement;

tenant means—

- (a) the person to whom premises are let under a tenancy agreement; and

- (b) the person to whom premises are to be let under a proposed tenancy agreement;

this Act includes the regulations;

trailer means a trailer within the meaning of the **Road Safety Act 1986**;

Tribunal means Victorian Civil and Administrative Tribunal established by the **Victorian Civil and Administrative Tribunal Act 1998**;

S. 3(1) def. of *Tribunal* substituted by No. 52/1998 s. 235(2)(d).

unregistrable movable dwelling means a movable dwelling that—

S. 3(1) def. of *unregistrable movable dwelling* inserted by No. 67/2010 s. 5(1), amended by No. 43/2012 s. 3(Sch. item 42.1).

- (a) is constructed on a chassis or in prefabricated sections; and
(b) once installed, is a freestanding dwelling with solid walls and roof; and
(c) is not a registrable movable dwelling;

urgent repairs means any work necessary to repair or remedy—

S. 3(1) def. of *urgent repairs* amended by No. 38/2018 s. 295(2)(f)–(i).

- (a) a burst water service; or
(b) a blocked or broken lavatory system; or
(c) a serious roof leak; or
(d) a gas leak; or
(e) a dangerous electrical fault; or
(f) flooding or serious flood damage; or
(g) serious storm or fire damage; or
(h) a failure or breakdown of any essential service or appliance provided for hot water, water, cooking, heating or laundering by—
(i) a landlord in rented premises; or

- (ii) a rooming house owner in a rooming house; or
- (iii) a caravan park owner or a caravan owner in a caravan park or caravan; or
- (iv) an SDA provider in an SDA enrolled dwelling; or
- (i) a failure or breakdown of the gas, electricity or water supply to rented premises, a rooming house, a caravan or an SDA enrolled dwelling; or
- (j) an appliance, fitting or fixture provided by a landlord, rooming house owner, caravan park owner, caravan owner or SDA provider that uses or supplies water and that is malfunctioning in a way that results or will result in a substantial amount of water being wasted; or
- (k) any fault or damage that makes rented premises, a rooming house, a room, a caravan or an SDA enrolled dwelling unsafe or insecure; or
- (l) a serious fault in a lift or staircase; or
- (m) any damage of a prescribed class;

Valuer-General means the Valuer-General under the **Valuation of Land Act 1960**;

visitor in relation to—

- (a) a tenant, means a person on rented premises or premises in which the rented premises are situated with the permission of the tenant; and

S. 3(1) def. of
visitor
amended by
No. 67/2010
s. 5(7).

- (b) a resident of a rooming house, means a person in a room or rooming house with the permission of the resident; and
 - (c) a resident of a caravan park, means a person on a site or in a caravan or caravan park with the permission of the resident; and
 - (d) a site tenant, means a person on a Part 4A site or in a Part 4A dwelling or Part 4A park with the permission of the site tenant.
- (2) In this Act, a reference to a landlord or a tenant is a reference to a landlord or a tenant under a tenancy agreement to which this Act applies.
- (3) For the purposes of the definition of *domestic partner* in subsection (1)—
- (a) *registered relationship* has the same meaning as in the **Relationships Act 2008**; and
 - (b) in determining whether persons who are not in a registered relationship are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case.
- (4) Nothing in this Act prevents a rooming house from consisting of more than one building.

S. 3(3)
inserted by
No. 27/2001
s. 3(Sch. 1
item 10.2),
substituted by
No. 12/2008
s. 73(1)(Sch. 1
item 51.2).

S. 3(4)
inserted by
No. 45/2002
s. 27(2).

4 Act binds the Crown

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

Pt 1 Div. 2
(Heading)
amended by
No. 67/2010
s. 6(1).

Division 2—Application of Act to tenancy agreements, rooming houses and site agreements

Subdivision 1—Application to tenancy agreements

5 Application of Act to assignees and transferees

- (1) This Act applies to a person to whom the rights and duties of—
 - (a) a landlord under a tenancy agreement; or
 - (b) a tenant under a tenancy agreement—have been assigned or transferred or have passed by operation of law in the same manner as this Act applies to the person by whom the rights were assigned or transferred or from whom the rights and duties have passed by operation of law.
- (2) Nothing in subsection (1) operates to confer any rights under this Act on an assignee of a tenant if the assignment is not in accordance with this Act.

S. 6
amended by
No. 6/2008
s. 28,
repealed by
No. 40/2018
s. 5.

* * * * *

S. 7
amended by
No. 47/2019
s. 53 (ILA
s. 39B(1)).

7 Premises used primarily as a residence

- (1) This Act applies to a tenancy agreement if the rented premises are used primarily for residential purposes even if a trade, profession or business is also carried on by the tenant on those premises.
- (2) This Act does not apply to an agreement where the Director of Housing, the Secretary to the Department of Health and Human Services or a registered agency within the meaning of the **Housing Act 1983** leases premises to a person or other entity who—
 - (a) does not reside in the premises; and

S. 7(2)
inserted by
No. 47/2019
s. 53.

- (b) uses the premises to provide residential accommodation to any other person.
- (3) This Act does not apply to an agreement under which the Director of Housing leases a share in premises to the co-owner of the premises.

S. 7(3)
inserted by
No. 47/2019
s. 53.

8 Premises connected to premises used for trade or business

This Act does not apply to a tenancy agreement if the rented premises form part of a building in which other premises are let by the landlord to the tenant for the purpose of a trade, profession or business carried on by the tenant.

9 Principal place of residence

This Act does not apply to a tenancy agreement that is a fixed term tenancy agreement if—

- (a) immediately before the agreement was entered into, the rented premises were the landlord's principal place of residence; and
- (b) the fixed term is less than 60 days; and
- (c) the agreement states that—
 - (i) immediately before the agreement was entered into, the rented premises were the landlord's principal place of residence; and
 - (ii) the landlord intends to resume occupancy of the premises on termination of the tenancy agreement.

10 Premises used for holidays

This Act does not apply to a tenancy agreement if the rented premises are ordinarily used for holiday purposes.

11 Farming and grazing

This Act does not apply to a tenancy agreement if the rented premises are included in or on other premises let to the tenant by the landlord that are for the time being used, or are ordinarily used, for the purpose of—

- (a) grazing, including agistment; or
- (b) farming, including dairy farming, pig-farming, poultry farming, fish-farming, tree-farming, bee-keeping, viticulture, horticulture, fruit growing or the growing of crops of any kind.

12 Contracts of employment

This Act does not apply to a tenancy agreement created or arising under the terms of a contract of employment or entered into in relation to such a contract.

13 Contracts of sale or mortgages

This Act does not apply to a tenancy agreement created or arising between the parties to a contract of sale or mortgage of the premises in accordance with a term of the contract or mortgage.

14 Prescribed premises and prescribed agreements

S. 14
(Heading)
inserted by
No. 47/2019
s. 54(1).

S. 14(1)
amended by
No. 47/2019
s. 54(2).

S. 14(2)
amended by
No. 47/2019
s. 54(3).

- (1) This Act does not apply to an agreement if the rented premises are prescribed premises or are included in a class of prescribed premises.
- (2) This Act does not apply to an agreement if the agreement is a prescribed agreement or is included in a class of prescribed agreements.

- (3) This Act does not apply to premises that were prescribed premises within the meaning of Part V of the **Landlord and Tenant Act 1958** immediately before that Act was repealed.

S. 14(3)
inserted by
No. 21/2012
s. 239(Sch. 6
item 36.2).

15 Certain provisions not to apply to tenancy agreements

* * * * *

S. 15(1)
amended by
No. 1/2010
s. 109(a),
repealed by
No. 21/2012
s. 239(Sch. 6
item 36.3).

- (2) Sections 137, 144, 145, 146, 150 and 154A of the **Property Law Act 1958** do not apply in relation to tenancy agreements to which this Act applies.

S. 15(2)
amended by
No. 1/2010
s. 109(b).

Subdivision 2—Application to rooming houses

* * * * *

S. 16
repealed by
No. 45/2002
s. 5.

17 Room used by owner or owner's family or employees

The rooming house provisions do not apply to a room used or intended to be used as a residence by the rooming house owner, a member of the owner's family or an employee of the owner.

18 Self-contained apartments

- (1) Subject to subsections (2) and (3), the rooming house provisions do not apply to a self-contained apartment.
- (2) This Act applies to a self-contained apartment in a rooming house as if it were a room in that rooming house if the ratio of rooms to self-contained apartments in the rooming house

S. 18(1)
amended by
No. 45/2002
s. 6(1).

is not less than 3 rooms for every self-contained apartment.

S. 18(3)
inserted by
No. 45/2002
s. 6(2).

- (3) This Act applies to a self-contained apartment in a building declared to be a rooming house by the Minister under section 19(3) as if the self-contained apartment were a room in that rooming house.

19 Minister may declare building to be a rooming house

- (1) An owner of a building—
- (a) in which there is one or more rooms available for occupancy on payment of rent; and
 - (b) in which the total number of people who may occupy the rooms is less than 4—

may apply to the Minister for a declaration that the building is a rooming house for the purposes of this Act.

- (2) The Minister, by notice published in the Government Gazette, may declare that building to be a rooming house for the purposes of this Act.
- (3) The Minister, at the request of the Director of Housing, may declare a building owned or leased by the Director of Housing and containing one or more self-contained apartments to be a rooming house for the purposes of this Act.

S. 19(3)
inserted by
No. 45/2002
s. 7.

- (4) A declaration under subsection (3) must be made by notice published in the Government Gazette.

S. 19(4)
inserted by
No. 45/2002
s. 7.

Subdivision 3—Application to tenancy agreements and rooming houses

20 Hotels and motels

- (1) Subject to subsections (2) and (3), this Act does not apply to a tenancy agreement or a room if the rented premises or room are situated in a motel or in premises licensed under the **Liquor Control Reform Act 1998**.

S. 20(1)
amended by
No. 74/2000
s. 3(Sch. 1
item 108).

- (2) This Act applies to a tenancy agreement for rented premises situated in a motel or licensed premises if the tenancy is for a fixed term exceeding 60 days.

- (3) Subject to section 94(1), the rooming house provisions apply to a room in a motel or licensed premises if a person—

S. 20(3)
amended by
No. 45/2002
s. 8.

- (a) occupies the room as his or her only or main residence; and
- (b) has so occupied any room in that rooming house for at least 60 consecutive days since the commencement of this section.

21 Educational institutions

- (1) This Act does not apply to a tenancy agreement or room if the rented premises or room are, or are situated in—

S. 21
amended by
No. 45/2002
s. 9(2) (ILA
s. 39B(1)).

- (a) any premises used as a school or for education and training purposes; or
- (b) any residential premises ancillary to a school or an institution which provides education and training if those premises—
- (i) are owned or leased by the school or the institution or formally affiliated with the school or institution; and

S. 21(1)(b)
substituted by
No. 45/2002
s. 9(1).

(ii) are used to accommodate students or staff using the premises referred to in paragraph (a).

S. 21(2)
inserted by
No. 45/2002
s. 9(2).

(2) For the purposes of this section, residential premises are formally affiliated with a school or an institution which provides education and training if a written agreement exists between the school or the institution and the owner or operator of the premises to provide accommodation primarily for students enrolled at the school or the institution or staff employed by the school or the institution.

S. 21(3)
inserted by
No. 19/2009
s. 18(1).

(3) Before entering a written agreement referred to in subsection (2), a school or institution must consider any prescribed criteria.

Note to s. 21
inserted by
No. 19/2009
s. 18(2).

Note

There are offences in sections 505A and 505B in Part 13 relating to this section.

S. 22
substituted by
No. 45/2002
s. 10.

22 Temporary crisis accommodation

This Act does not apply to a tenancy agreement or room if the rented premises or room are provided as temporary crisis accommodation.

23 Health or residential services

This Act does not apply to a tenancy agreement or room if the rented premises or room are, or are situated in—

- (a) a health or residential service; or
- (b) any premises ancillary to a health or residential service and primarily used to accommodate medical, nursing and other staff or any member of the family of a person using that service.

S. 23(b)
amended by
No. 11/2002
s. 3(Sch. 1
item 56.1).

Note

A premises used for specialist disability accommodation that is an SDA enrolled dwelling is not a health or residential service: see definition of *health or residential service* in section 3(1).

Note to s. 23
inserted by
No. 38/2018
s. 296.

Subdivision 4—Application to site agreements

Pt 1 Div. 2
Subdiv. 4
(Heading and
ss 23A–23G)
inserted by
No. 67/2010
s. 6(2).

23A Application of Act to assignees and transferees

This Act applies to a person to whom the rights and duties of—

- (a) a site owner under a site agreement; or
- (b) a site tenant under a site agreement—

have been assigned or transferred or have passed by operation of law in the same manner as this Act applies to the person by whom the rights were assigned or transferred or from whom the rights and duties have passed by operation of law.

S. 23A
inserted by
No. 67/2010
s. 6(2).

23B Site agreements exceeding 5 years

This Act applies to a site agreement whether or not the initial term of the site agreement exceeds 5 years.

S. 23B
inserted by
No. 67/2010
s. 6(2).

23C Part 4A site used under contract of employment

This Act does not apply to a site agreement created or arising under the terms of a contract of employment or entered into in relation to a contract of employment.

S. 23C
inserted by
No. 67/2010
s. 6(2).

23D Part 4A site used primarily as a residence

This Act applies to a site agreement if the Part 4A site the subject of the site agreement is used primarily for residential purposes even if a trade,

S. 23D
inserted by
No. 67/2010
s. 6(2).

profession or business is also carried on by the site tenant on that site.

S. 23E
inserted by
No. 67/2010
s. 6(2).

23E Part 4A site used for holidays

This Act does not apply to a site agreement if the Part 4A site the subject of the site agreement is ordinarily used for holiday purposes.

S. 23F
inserted by
No. 67/2010
s. 6(2).

23F Prescribed Part 4A sites and prescribed site agreements

- (1) This Act does not apply to a Part 4A site if the Part 4A site is a prescribed Part 4A site or is included in a class of prescribed Part 4A site.
- (2) This Act does not apply to a site agreement if the site agreement is a prescribed site agreement or is included in a class of prescribed site agreement.

S. 23G
inserted by
No. 67/2010
s. 6(2).

23G Certain provisions not to apply to site agreements

- (1) Parts IV and IVA of the **Landlord and Tenant Act 1958** do not apply in relation to a site agreement to which this Act applies.
- (2) Sections 137, 144, 145, 146 and 150 of the **Property Law Act 1958** do not apply in relation to a site agreement to which this Act applies.

Division 3—Exemptions by Tribunal

24 Application for exemption

- (1) A landlord or tenant may apply to the Tribunal for an order declaring that a provision of this Act does not apply to the tenancy agreement.
- (2) A rooming house owner, a caravan park owner, a caravan owner or a resident may apply to the Tribunal for an order declaring that a provision of this Act (other than Part 14) does not apply to the applicant.

- (3) A site owner or site tenant may apply to the Tribunal for an order declaring that a provision of this Act (other than Part 14) does not apply to the site agreement.

S. 24(3)
inserted by
No. 67/2010
s. 7.

25 Order of Tribunal

- (1) On an application under section 24(1), the Tribunal, after hearing the landlord and the tenant, may by order declare that the provision does not apply to the tenancy agreement.

- (2) On an application under section 24(2), the Tribunal, after hearing the rooming house owner, caravan park owner or caravan owner (as the case requires) and the resident, may by order declare that the provision does not apply to the applicant.

- (2A) On an application under section 24(3), the Tribunal, after hearing the site owner and the site tenant, may by order declare that the provision does not apply to the site agreement.

S. 25(2A)
inserted by
No. 67/2010
s. 8(1).

- (3) The Tribunal must not make an order under subsection (1), (2) or (2A) unless it is satisfied that in all the circumstances the application of a provision of this Act would occasion severe hardship to the applicant.

S. 25(3)
amended by
No. 67/2010
s. 8(2).

- (4) An order under subsection (1), (2) or (2A)—

- (a) may be expressed to operate for a period stated in the order; and
- (b) may be made subject to any conditions that the Tribunal thinks fit.

S. 25(4)
amended by
No. 67/2010
s. 8(2).

- (5) An order under this section has effect according to its terms.

Part 2—Residential tenancies— tenancy agreements

Division 1—General requirements for tenancy agreements

26 Tenancy agreements to be in standard form

S. 26(1)
substituted by
No. 40/2018
s. 6(1).

- (1) If a tenancy agreement for a fixed term not exceeding 5 years is in writing, it must be in the standard form tenancy agreement for a fixed term not exceeding 5 years.

S. 26(1A)
inserted by
No. 40/2018
s. 6(2).

- (1A) A tenancy agreement for a fixed term of more than 5 years—
- (a) must be in writing; and
 - (b) must be—
 - (i) in the standard form tenancy agreement for a tenancy agreement for a fixed term not exceeding 5 years; or
 - (ii) in the standard form tenancy agreement for a tenancy agreement for a fixed term of more than 5 years.

S. 26(2)
amended by
Nos 67/2010
s. 91, 40/2018
s. 6(3).

- (2) A landlord or tenant must not prepare or authorise the preparation of a tenancy agreement for a fixed term not exceeding 5 years in writing in a form that is not in the prescribed standard form.

Penalty: 10 penalty units.

S. 26(2A)
inserted by
No. 40/2018
s. 6(4).

- (2A) A landlord or tenant must not prepare or authorise the preparation of a tenancy agreement for a fixed term of more than 5 years if the agreement is not either—
- (a) in the standard form tenancy agreement for a tenancy agreement for a fixed term not exceeding 5 years; or

- (b) in the standard form tenancy agreement for a tenancy agreement for a fixed term of more than 5 years.

Penalty: 10 penalty units.

- (3) A failure to comply with this section does not make the tenancy agreement illegal, invalid or unenforceable.

Note

In the case of a landlord who is an SDA provider providing an SDA enrolled dwelling to an SDA resident, see Division 2 of Part 12A.

Note to s. 26
inserted by
No. 38/2018
s. 297.

26A Offence to include prescribed prohibited term in tenancy agreement for fixed term of more than 5 years

S. 26A
inserted by
No. 40/2018
s. 7.

- (1) A landlord or tenant must not prepare or authorise the preparation of a tenancy agreement for a fixed term of more than 5 years that contains a prescribed prohibited term.

Penalty: 10 penalty units.

- (2) If a tenancy agreement for a fixed term of more than 5 years contains a prescribed prohibited term, that term is void and unenforceable.

27 Invalid terms

S. 27
substituted by
No. 40/2018
s. 8.

- (1) Subject to subsection (3), a term of a tenancy agreement is invalid if it purports to exclude, restrict or modify or purports to have the effect of excluding, restricting or modifying—
- (a) the application to that tenancy agreement of all or any of the provisions of this Act; or
 - (b) the exercise of a right conferred by this Act.
- (2) A term referred to in subsection (1) includes a term that is not set out in the tenancy agreement but is incorporated in it by another term of the tenancy agreement.

- (3) Subsection (1) does not apply to a term of a standard form tenancy agreement for a fixed term of more than 5 years that is inconsistent with, or varies the requirements of, this Part.
- (4) A provision in a written tenancy agreement or any other agreement that requires a party to a written tenancy agreement to bear any fees, costs or charges incurred by the other party in connection with the preparation of the tenancy agreement is invalid.

S. 27A
inserted by
No. 40/2018
s. 8.

27A Additional term in fixed term tenancy agreement for more than 5 years

- (1) Subject to subsection (2), a tenancy agreement for a fixed term of more than 5 years may include a term agreed to by the parties to the agreement that is additional to the terms contained in the standard form tenancy agreement for that agreement.
- (2) A person must not include an additional term in a tenancy agreement for a fixed term of more than 5 years if the additional term—
 - (a) excludes, restricts or modifies a provision of the standard form tenancy agreement for that agreement; or
 - (b) purports to exclude, restrict or modify a provision of the standard form tenancy agreement for that agreement.

Penalty: 10 penalty units.

28 Harsh and unconscionable terms

- (1) A tenant may apply to the Tribunal for an order declaring invalid or varying a term of the tenancy agreement.

- (2) On an application under subsection (1), the Tribunal may by order declare invalid or vary a term of the tenancy agreement if it is satisfied that the term is harsh or unconscionable or is such that a court exercising its equitable jurisdiction would grant relief.
- (3) An order under this section has effect according to its terms.

29 Copy of agreement to be made available to tenant

- (1) A landlord must not give a tenant—
 - (a) a proposed tenancy agreement; or
 - (b) any other document which contains terms that are proposed to form part of the tenancy agreement—

S. 29(1)
amended by
No. 67/2010
s. 92.

to sign unless the landlord has given the tenant a copy of that proposed agreement or other document for the tenant's own use.

Penalty: 10 penalty units.

- (2) If a tenancy agreement or any terms of it are in writing signed by the tenant, the landlord must give the tenant a copy of the agreement or those terms signed by the tenant and the landlord within 14 days after the agreement is entered into or the terms are agreed.

S. 29(2)
amended by
No. 67/2010
s. 92.

Penalty: 10 penalty units.

Note

In the case of a landlord who is an SDA provider providing an SDA enrolled dwelling to an SDA resident, see Division 2 of Part 12A.

Note to s. 29
inserted by
No. 38/2018
s. 298.

S. 30(1)
amended by
No. 67/2010
s. 93.

30 Tenants with children

- (1) A person must not—
 - (a) refuse to let rented premises; or
 - (b) instruct or permit that person's agent to refuse to let rented premises—
to another person under a tenancy agreement on the ground that the other person intends to live on the premises with a child.
Penalty: 10 penalty units.
- (2) This section does not apply to—
 - (a) premises proposed to be let by a public statutory authority or body corporate for which the authority or body receives financial assistance for the provision of housing for lone persons or childless couples under an Act or an Act of the Commonwealth; or
 - (b) premises that are the principal place of residence of the person refusing or instructing or permitting that person's agent to refuse to let the premises to a person intending to live with a child; or
 - (c) premises that by reason of their design or location are unsuitable or inappropriate for occupation by a child.
- (3) A person who claims that premises are not, by reason of their design or location, unsuitable or inappropriate for occupation by a child may apply to the Tribunal for an order declaring whether or not the premises are unsuitable or inappropriate for occupation by a child.
- (4) In this section **child** means a child under 16 years of age.

Division 2—Bonds

31 What is the maximum bond?

- (1) Subject to this Act, a person must not demand or accept in relation to a tenancy agreement a bond the total of which exceeds—
- (a) the amount of rent payable under the tenancy agreement for one month, unless an order is in force under section 33; or
 - (b) the maximum amount of the bond determined under an order in force under section 33.

S. 31(1)
amended by
No. 67/2010
s. 94.

Penalty: 20 penalty units.

- (2) Subsection (1) does not apply to a tenancy agreement—
- (a) relating to premises that, immediately before the tenancy agreement was entered into, were the landlord's principal place of residence; and
 - (b) that states that fact; and
 - (c) that states that the landlord intends to resume occupancy of the premises on the termination of the tenancy agreement.
- (3) Subsection (1) does not apply to a tenancy agreement if the amount of rent payable under a tenancy agreement for 1 week exceeds—
- (a) \$350; or
 - (b) if a greater amount is prescribed for the purposes of this section, that greater amount.

32 Application to increase maximum amount of bond

A landlord who wishes to demand a bond in relation to a tenancy agreement or proposed tenancy agreement which exceeds the limit set under section 31 may apply to the Tribunal for an

order determining the maximum amount of the bond.

33 Tribunal may determine maximum bond

On an application under section 32, the Tribunal may make an order determining the maximum amount of bond payable if it considers that it is reasonable to increase the bond having regard to—

- (a) the character, condition or quality of the goods, furniture or fittings let or provided under the tenancy agreement or proposed tenancy agreement; and
- (b) the character and condition of the rented premises.

34 Not more than 1 bond is payable in respect of continuous occupation

- (1) A person must not demand or accept a bond for a subsequent tenancy agreement under which a tenant continues in occupation of rented premises if that tenant—
 - (a) has paid a bond for the initial tenancy agreement under which the amount of rent payable for 1 week does not exceed—
 - (i) \$350; or
 - (ii) if a greater amount is prescribed for the purposes of section 31, that greater amount; and
 - (b) continues in occupation of those premises under the subsequent tenancy agreement.

Penalty: 20 penalty units.

- (2) Subsection (1) does not apply to a tenancy agreement for a fixed term of more than 5 years in the standard form tenancy agreement referred to in section 26(1A)(b)(ii).

S. 34
amended by
Nos 67/2010
s. 95,
40/2018 s. 9
(ILA s. 39B(1)).

S. 34(2)
inserted by
No. 40/2018
s. 9.

34A Additional amount of bond proportionate with rent increase

S. 34A
inserted by
No. 40/2018
s. 10.

- (1) This section applies to a tenancy agreement for a fixed term of more than 5 years in the standard form tenancy agreement referred to in section 26(1A)(b)(ii).
- (2) The landlord may require the tenant to pay an additional amount of bond, if—
 - (a) the landlord has given 120 days written notice in a form approved by the Director to the tenant requiring an additional payment of bond; and
 - (b) the additional payment of bond is required by the landlord after the expiry of a period of 5 years of continuous occupation by the tenant; and
 - (c) the fixed term of the tenancy agreement—
 - (i) is extended by a period of at least 5 years from the expiry of the first fixed term; or
 - (ii) has an unexpired period of 5 years or more; or
 - (iii) commences after a periodic tenancy; or
 - (iv) commences after the expiry of a fixed term tenancy agreement, whether in the form prescribed for the purposes of section 26(1) or 26(1A)(b)(ii).
- (3) An additional amount of bond under subsection (2) is an amount determined by—
 - (a) calculating a total amount of bond for the next 5 year period of the tenancy agreement by using the rent payable at the commencement of the next 5 year period of

the tenancy agreement as a basis for that bond's calculation; and

- (b) subtracting the total amount of bond currently lodged with the Authority from the total amount of bond calculated under paragraph (a).

Example

For the first 5 year period of a tenancy agreement, the rent payable is \$400 per week. The bond is 4 weeks rent, or \$1600. For the next 5 year period of the tenancy agreement, occurring immediately after the first period, the rent payable is increased to \$520 per week. The bond amount calculated by 4 weeks rent at the new amount of rent payable (\$520 per week) is \$2080. If a term referred to in this section is included in the tenancy agreement, the landlord would be permitted to require the tenant to pay an additional amount of bond for \$480. This amount is proportionate to the increase in rent payable under the tenancy agreement.

- (4) The additional amount of bond referred to in subsection (3) must be paid by the tenant on or before the end of the period of notice referred to in subsection (2)(a).
- (5) The landlord must not require an additional amount of bond more than once in any 5 year period of a tenancy agreement to which this section applies.

S. 34B
inserted by
No. 40/2018
s. 10.

34B Tenant may apply to VCAT to vary additional amount of bond

- (1) If a landlord requires an additional amount of bond under section 34A, the tenant may apply to VCAT—
 - (a) to vary any term in the tenancy agreement that permits the landlord to require an additional amount of bond; or
 - (b) to vary the amount of additional amount of bond to be paid.

- (2) VCAT may make any order that VCAT considers appropriate if satisfied that not making an order would result in severe hardship for the tenant.
- (3) In making an order under subsection (2), VCAT is to have regard to—
 - (a) whether the landlord or tenant are otherwise in breach of any term of the tenancy agreement or this Act; and
 - (b) the financial circumstances of the tenant and the landlord; and
 - (c) the condition of the rented premises; and
 - (d) any other matter VCAT considers to be relevant to the making of the order.

35 Condition report

- (1) If a tenant pays a bond, the landlord must, before the tenant enters into occupation of the rented premises, give the tenant 2 copies of a condition report signed by or on behalf of the landlord specifying the state of repair and general condition of the premises on the day specified in the report.

S. 35(1)
amended by
No. 67/2010
s. 96.

Penalty: 10 penalty units.

- (2) Within 3 business days after entering into occupation of the rented premises, the tenant must return one copy of the condition report to the landlord—
 - (a) signed by or on behalf of the tenant; or
 - (b) with an endorsement so signed to the effect that the tenant agrees or disagrees with the whole or any specified part of the report.

36 Condition report is evidence of state of repair

- (1) A statement in a condition report under section 35 is conclusive evidence, for the purposes of this Act, of the state of repair or general condition of

the rented premises on the day specified in the report if the condition report is signed by or on behalf of the landlord and the tenant.

- (2) Subsection (1) does not apply to—
- (a) a state of repair or general condition that could not reasonably have been discovered on a reasonable inspection of the premises; or
 - (b) a statement with which the tenant disagrees under an endorsement on the report.

37 Certain guarantees prohibited

S. 37(1)
amended by
No. 67/2010
s. 97.

- (1) A person must not demand or require a tenant to obtain a guarantee for the performance of any of the tenant's duties in relation to the tenancy agreement if the tenant has paid or is required to pay a bond under a tenancy agreement.

Penalty: 20 penalty units.

- (2) This section does not apply to a tenancy agreement referred to in section 31(2) or (3).
- (3) A guarantee obtained in contravention of this section is invalid and unenforceable.

38 Maximum amount of certain guarantees

- (1) If a tenant—
- (a) has not paid a bond or has not been required to pay a bond; and
 - (b) has obtained a guarantee in relation to a tenancy agreement—

the guarantee is unenforceable against the guarantor to the extent to which the amount guaranteed exceeds the amount of rent payable under the tenancy agreement for 1 month.

- (2) This section does not apply to a tenancy agreement referred to in section 31(2) or (3).

Division 3—Rents

39 Accrual of rent

For the purposes of this Act, rent under a tenancy agreement accrues from day to day and, subject to section 242, is recoverable or refundable accordingly.

40 Limit on rent in advance

- (1) A landlord must not require a tenant to pay rent under a tenancy agreement more than 1 month in advance.

S. 40(1)
amended by
No. 67/2010
s. 98.

Penalty: 20 penalty units.

- (2) Subsection (1) does not apply if the amount of rent payable for each week under the tenancy agreement exceeds—

- (a) \$350; or
- (b) if a greater amount is prescribed for the purposes of section 31, that greater amount.

41 Rent in advance under weekly tenancy agreement

S. 41
amended by
No. 67/2010
s. 99.

Despite section 40, a landlord must not require a tenant to pay rent under a tenancy agreement more than 2 weeks in advance if the period in respect of which rent is payable under that agreement is not more than 1 week.

Penalty: 20 penalty units.

42 Where and how is rent to be paid?

- (1) The rent under a tenancy agreement is payable—
- (a) if a place for payment of rent is specified in the agreement, at that place; or
 - (b) if no place is specified in the agreement, at the rented premises.
- (2) The rent under a tenancy agreement is payable in the manner (if any) specified in the agreement.

43 Receipts for rent

S. 43(1)
amended by
No. 67/2010
s. 100.

- (1) A person who receives a payment of rent from a tenant must give a written receipt in accordance with this section to the person making the payment—
- (a) immediately, if the payment is made in person; or
 - (b) if the payment is not made in person and a receipt is requested at the time of making the payment, within 5 business days of receiving the payment.

Penalty: 10 penalty units.

S. 43(2)
substituted by
No. 45/2002
s. 11,
amended by
No. 67/2010
s. 100.

- (2) If a person receives a payment of rent from a tenant and a written receipt is not required to be given under subsection (1), the person must keep a record of the payment of rent until the earlier of—
- (a) the end of 12 months after receiving the payment; or
 - (b) if a tenant requests a copy of the record before the end of 12 months after making the payment, the provision of a copy of the record to the tenant.

Penalty: 10 penalty units.

S. 43(2A)
inserted by
No. 45/2002
s. 11,
amended by
No. 67/2010
s. 100.

- (2A) If a tenant requests a copy of a record under subsection (2)(b) before the end of 12 months after making the payment of rent, a person who keeps a record under subsection (2) must provide a copy of that record to the tenant within 5 business days after receiving the request.

Penalty: 10 penalty units.

S. 43(2B)
inserted by
No. 45/2002
s. 11.

- (2B) For the purposes of subsection (2), a record must contain information which enables the details specified in paragraphs (a) to (e) of subsection (3) to be identified.

- (3) A receipt under this section must be signed by the person who receives the payment and must state—
 - (a) the name of the tenant and the rented premises; and
 - (b) the date of receipt; and
 - (c) the period for which payment is made; and
 - (d) the amount paid; and
 - (e) the fact that the payment is for rent.
- (4) The regulations may provide that a prescribed person is exempt from subsection (1), (2) or (3) subject to the conditions, if any, specified in the regulations.

44 How much notice of rent increase is required?

- (1) A landlord must give a tenant at least 60 days notice in the prescribed form of a proposed rent increase. S. 44(1)
amended by
No. 45/2002
s. 12(1)(a).
- (2) A notice of a proposed rent increase under subsection (1) may only provide for one rent increase.
- (3) The notice of a proposed rent increase must include a statement informing the tenant of the tenant's right under section 45 to apply within 30 days after the notice is given to the Director to investigate and report on the proposed rent. S. 44(3)
amended by
No. 45/2002
s. 12(1)(b).
- (4) A landlord under a fixed term tenancy agreement must not increase the rent before the term ends unless the agreement provides for a rent increase within the fixed term.
- (4A) A landlord must not increase the rent payable under a tenancy agreement at intervals of less than 12 months. S. 44(4A)
inserted by
No. 45/2002
s. 12(2),
amended by
No. 45/2018
s. 34(5)(c).

- (5) A rent increase in contravention of this section is invalid.

45 Tenant may complain to Director about excessive rent

- (1) A tenant may apply to the Director to investigate and report if the tenant—
- (a) considers that the rent under a tenancy agreement is excessive having regard to the fact that the landlord has reduced or withdrawn services, facilities or other items provided with the rented premises; or
 - (b) has received a notice of a rent increase and the tenant considers that the proposed rent is excessive.
- (2) An application under subsection (1)(b) must be made in writing within 30 days after the notice of the rent increase is given.
- (3) As soon as practicable after receiving an application, the Director must—
- (a) carry out an investigation; and
 - (b) give a written report to the tenant and a copy of the report to the landlord.
- (4) The report of the Director must—
- (a) include a statement informing the tenant of the tenant's right under section 46 to apply to the Tribunal for an order in respect of the proposed rent; and
 - (b) take into account the matters referred to in section 47(3).

46 Application to Tribunal about excessive rent

(1) After receiving a report from the Director under section 45, the tenant may apply to the Tribunal for an order declaring the rent or proposed rent excessive.

(2) An application under subsection (1) must—

(a) be made within 30 days after the tenant receives the Director's report;

S. 46(2)(a)
amended by
No. 52/1998
s. 236(a)(i).

* * * * *

S. 46(2)(b)
repealed by
No. 52/1998
s. 236(a)(ii).

(3) If a tenant has received a notice of a rent increase and the tenant considers that the proposed rent is excessive, the tenant may, with the leave of the Tribunal, apply to the Tribunal for an order declaring the proposed rent excessive without receiving a report from the Director under section 45.

(4) An application under subsection (3) may only be made after the end of 30 days after the notice of the rent increase is given.

(5) The Tribunal may grant leave under subsection (3) if it is satisfied that there are reasonable grounds for the tenant's failure to request the Director to investigate and report under section 45.

47 What can the Tribunal order?

(1) If an application is made under section 46, the Tribunal may—

(a) make an order—

(i) declaring the rent or proposed rent excessive; and

- (ii) directing that for the period specified in the order the rent must not exceed the amount specified in the order; or
- (b) dismiss the application.
- (2) If the Director's report has been obtained under section 45, the Tribunal must have regard to that report in determining the application.
- (3) The Tribunal must make an order declaring the rent or proposed rent excessive if it is satisfied that the rent or proposed rent is more than that which should reasonably be paid by a tenant having regard to—
 - (a) the rent payable for comparable rented premises let under a tenancy agreement by a landlord, other than a public statutory authority, in the same locality;
 - (b) the state of repair and general condition of the rented premises;
 - (c) the cost of goods and services and facilities provided with the rented premises;
 - (d) any charges in respect of the rented premises for which the landlord is or may be liable under this Act or any other Act or the tenancy agreement;
 - (e) the cost of goods and services and facilities provided by the tenant under the tenancy agreement;
 - (f) any charges payable by the tenant under this Act or any other Act or the tenancy agreement;
 - (g) any work which the tenant has done with the landlord's consent or agreed with the landlord to do to the premises;

- (h) any changes in the rent and the condition of the rented premises or facilities since the commencement of the tenancy agreement and since the last rent increase;
 - (ha) the number of rent increases (if any) in the preceding 24 months, the amount of each rent increase in that period and the timing of those increases;
 - (i) any valuation of the rented premises.
- (4) If the Tribunal makes an order under subsection (1)(a) in relation to rented premises, the landlord cannot require the tenant to pay an amount of rent greater than that specified in the order for a period of 12 months after the day on which the order comes into operation.

S. 47(3)(ha)
inserted by
No. 45/2002
s. 13.

48 Tribunal can order refund of rent

- (1) If the Tribunal makes an order under section 47, the Tribunal may include in the order a provision requiring the landlord to refund to the tenant an amount equal to the difference between—
- (a) the amount of rent payable under the tenancy agreement for the period commencing on the day that the tenant—
 - (i) applied to the Director to investigate; or
 - (ii) applied to the Tribunal under section 46(3)—and ending on the day immediately before the day on which the order is made; and
 - (b) the maximum amount of rent that would have been payable for that period if the order had been made on the day on which that application was made.
- (2) The order may specify the procedure for the refund to the tenant.

S. 49
amended by
No. 67/2010
s. 101.

49 Tenant's goods not to be taken for rent

A person must not take or dispose of a tenant's goods on account of any rent owing by the tenant.

Penalty: 20 penalty units.

Division 4—Other charges

S. 50
amended by
No. 67/2010
s. 102.

50 Application and holding deposits

A person who in respect of a proposed tenancy agreement receives a payment from a tenant as a sign of good faith must refund the payment to the tenant—

- (a) on the agreement being entered into, if it is entered into before the end of 14 days after the day on which the person received the payment; or
- (b) on the next business day after the end of that period, if the agreement was not entered into within that period.

Penalty: 20 penalty units.

51 Certain charges prohibited

S. 51(1)
amended by
No. 67/2010
s. 103.

- (1) A person must not demand or receive from a tenant a charge or indemnity for a charge in relation to the making, continuation or renewal of a tenancy agreement that is a premium, bonus, commission or key money.

Penalty: 20 penalty units.

S. 51(2)
amended by
No. 67/2010
s. 103.

- (2) A person must not demand or receive from a tenant under a proposed tenancy agreement a charge in relation to the inspection of the premises by a tenant.

Penalty: 20 penalty units.

- (3) A person must not demand or receive from a tenant a charge or indemnity for a charge in relation to—
- (a) the first issue of a rent payment card under a tenancy agreement; or
 - (b) the establishment or use of direct debit facilities for payment of rent under a tenancy agreement.

S. 51(3)
inserted by
No. 45/2002
s. 14,
amended by
No. 67/2010
s. 103.

Penalty: 20 penalty units.

52 Tenant's liability for various utility charges

S. 52
amended by
No. 47/2019
s. 92.

Subject to section 53AA, a tenant is liable for—

- (a) all charges in respect of the supply or use of electricity, gas or oil in respect of the tenant's occupation of rented premises that are separately metered except—
 - (i) the installation costs and charges in respect of the initial connection of the service to the rented premises; and
 - (ii) the supply or hire of gas bottles;
- (b) the cost of all water supplied to the rented premises during the tenant's occupancy if the cost is based solely on the amount of water supplied and the premises are separately metered;
- (c) that part of the charge that is based on the amount of water supplied to the premises during the tenant's occupation if the cost of water supplied is only partly based on the amount of water supplied to the premises and the premises are separately metered;
- (d) all sewerage disposal charges in respect of separately metered rented premises imposed during the tenant's occupation of the rented

S. 52(d)
amended by
No. 17/2012
s. 94(1).

premises by a water corporation under the
Water Act 1989;

- (e) all charges in respect of the use of bottled gas at the rented premises in respect of the tenant's occupation of the rented premises.

53 Landlord's liability for various utility charges

S. 53(1)
amended by
No. 47/2019
s. 93.

- (1) Subject to section 53AA, a landlord is liable for—

- (a) the installation costs and charges in respect of the initial connection to rented premises of any electricity, water, gas, bottled gas or oil supply service;
- (b) all charges in respect of the supply or use of electricity, gas (except bottled gas) or oil by the tenant at rented premises that are not separately metered;
- (c) all charges arising from a water supply service to separately metered rented premises that are not based on the amount of water supplied to the premises;
- (d) all costs and charges related to a water supply service to and water supplied to rented premises that are not separately metered;
- (e) all sewerage disposal charges in respect of rented premises that are not separately metered imposed by a water corporation under the **Water Act 1989**;
- (f) all charges related to the supply of sewerage services or the supply or use of drainage services to or at the rented premises;
- (g) all charges related to the supply or hire of gas bottles to the rented premises.

S. 53(1)(e)
amended by
No. 17/2012
s. 94(2).

- (2) A landlord may agree to take over liability for any cost or charge for which the tenant is liable under section 52.
- (3) An agreement under subsection (2) must be in writing and be signed by the landlord.

53AA Agreements relating to installation of solar energy system

S. 53AA
inserted by
No. 47/2019
s. 94.

- (1) A landlord and tenant may enter an agreement under which the tenant is liable for an amount in relation to the costs and charges for the installation of a solar energy system under the Solar Homes Program for the rented premises.
- (2) An agreement under subsection (1) must be consistent with the Solar Homes Program.

54 Landlord's liability for charges for supply to non-complying appliances

- (1) A landlord is liable to pay for the cost of water supplied to or used at the rented premises for as long as the landlord is in breach of section 69 or of any law requiring the use of water efficient appliances for the premises.
- (2) Subsection (1) applies despite anything to the contrary in section 52 of this Act and Part 13 of the **Water Act 1989**.

S. 54(2)
amended by
No. 85/2006
s. 173(Sch. 1
item 9).

55 Reimbursement

- (1) If a landlord pays for anything for which the tenant is liable under section 52, the tenant must reimburse the landlord within 28 days after receiving a written request for reimbursement attached to a copy of the account and the receipt or other evidence of payment.
- (2) If a tenant pays for anything for which the landlord is liable under section 53 or 54, the landlord must reimburse the tenant within

28 days after receiving a written request for reimbursement attached to a copy of the account and the receipt or other evidence of payment.

- (3) Subsection (1) does not apply if there is an agreement to the contrary under section 53.

56 Landlord must not seek overpayment for utility charge

S. 56(1)
amended by
Nos 45/2002
s. 15, 67/2010
s. 104.

- (1) The landlord of separately metered rented premises must not seek payment or reimbursement for a cost or charge under section 55 that is more than the amount that the relevant supplier of the utility would have charged the tenant.

Penalty: 20 penalty units.

S. 56(2)
amended by
No. 45/2002
s. 15.

- (2) If the relevant supplier of the utility has issued an account to the landlord, the landlord cannot recover from the tenant an amount which includes any amount that could have been claimed as a concession or rebate by or on behalf of the tenant from the relevant supplier of the utility.

- (3) Subsection (2) does not apply if the concession or rebate—

S. 56(3)(a)
amended by
No. 45/2002
s. 15.

- (a) must be claimed by the tenant and the landlord has given the tenant an opportunity to claim it and the tenant does not do so by the payment date set by the relevant supplier of the utility; or

- (b) is paid directly to the tenant as a refund.

57 Director of Housing may impose service charge

- (1) The Director of Housing may impose a service charge on a tenant in rented premises let by the Director of Housing for any water, central heating, laundry or utility services or facilities made available to the tenant.

- (2) Subsection (1) only applies if it is not possible or practicable to accurately measure the use by the tenant of that service or facility.
- (3) A service charge may be increased by an amount or decreased in line with changes in the cost of providing the services or facilities.
- (4) This section applies despite anything to the contrary in any tenancy agreement.
- (5) In this section *Director of Housing* includes any incorporated body that receives financial assistance from the Director of Housing for the purposes of providing non-profit housing.

58 Indemnity for taxes and rates

- (1) A landlord under a tenancy agreement must indemnify the tenant for any amount recoverable from the tenant by a public statutory authority for rates or taxes payable under an Act for those rented premises.
- (2) Subsection (1) does not apply to—
 - (a) rates or taxes based solely on the amount of a substance or service that is supplied to the premises; or
 - (b) a fixed term tenancy agreement for a period exceeding 1 year.

Division 5—General duties of tenants and landlords

59 Tenant must not use premises for illegal purpose

A tenant must not use the rented premises or permit their use for any purpose that is illegal at common law or under an Act.

60 Tenant must not cause nuisance or interference

- (1) A tenant must not use the rented premises or permit their use in any manner that causes a nuisance.

(2) A tenant must not—

- (a) use the rented premises or common areas; or
- (b) permit his or her visitors to use the rented premises or common areas; or
- (c) otherwise permit the use of the rented premises—

in any manner that causes an interference with the reasonable peace, comfort or privacy of any occupier of neighbouring premises.

61 Tenant must avoid damage to premises or common areas

- (1) A tenant must ensure that care is taken to avoid damaging the rented premises.
- (2) A tenant must take reasonable care to avoid damaging the common areas.

62 Tenant must give notice of damage

A tenant who becomes aware of damage to the rented premises must as soon as practicable give notice to the landlord specifying the nature of the damage.

63 Tenant must keep rented premises clean

A tenant must keep the rented premises in a reasonably clean condition except to the extent that the landlord is responsible under the tenancy agreement for keeping the premises in that condition.

64 Tenant must not install fixtures etc. without consent

- (1) A tenant must not, without the landlord's consent—
 - (a) install any fixtures on the rented premises; or
 - (b) make any alteration, renovation or addition to the rented premises.

- (2) Before a tenancy agreement terminates, a tenant who has installed fixtures on or renovated, altered or added to the rented premises (whether or not with the landlord's written consent) must—
 - (a) restore the premises to the condition they were in immediately before the installation, renovation or addition, fair wear and tear excepted; or
 - (b) pay the landlord an amount equal to the reasonable cost of restoring the premises to that condition.
- (3) Subsection (2) does not apply if—
 - (a) the tenancy agreement otherwise provides; or
 - (b) the landlord and the tenant otherwise agree.

65 Landlord's duty in relation to provision of premises

- (1) A landlord must ensure that on the day that it is agreed that the tenant is to enter into occupation, the rented premises are vacant and in a reasonably clean condition.
- (2) A tenant is not required to enter into occupation of premises which do not comply with subsection (1).
- (3) If premises do not comply with subsection (1), the tenant is not required to pay rent for the rented premises in respect of the period beginning on the agreed day on which the tenant is to enter into occupation of the premises and ending on the day on which the tenant actually enters into occupation.

66 Landlord must give tenant certain information

- (1) The landlord must on or before the occupation day give the tenant a written statement in a form approved by the Director setting out in summary

S. 66(1)
amended by
No. 67/2010
s. 105.

form the rights and duties of a landlord and tenant under a tenancy agreement.

Penalty: 20 penalty units.

S. 66(1A)
inserted by
No. 45/2018
s. 53(4).

- (1A) A written statement referred to in subsection (1) may be given by electronic communication in accordance with the **Electronic Transactions (Victoria) Act 2000**.

S. 66(2)
amended by
No. 67/2010
s. 105.

- (2) If there is no agent acting for the landlord, the landlord must on or before the occupation day give the tenant—
- (a) written notice of the landlord's full name and address for the service of documents; and
 - (b) an emergency telephone number to be used in the case of the need for urgent repairs.

Penalty: 20 penalty units.

S. 66(3)
amended by
No. 67/2010
s. 105.

- (3) If there is an agent acting for the landlord, the landlord must on or before the occupation day give the tenant—
- (a) written notice of the agent's full name and address for service of documents and the agent's telephone number and facsimile number; and
 - (b) a written statement setting out—
 - (i) whether or not the agent can authorise urgent repairs; and
 - (ii) if the agent can authorise urgent repairs, the maximum amount for repairs which the agent can authorise; and
 - (iii) the agent's telephone number or facsimile number for urgent repairs.

Penalty: 20 penalty units.

- (4) A landlord must give the tenant notice in writing of any change in the information set out in subsection (2) or (3) before the end of 7 days after the change.

S. 66(4)
amended by
No. 67/2010
s. 105.

Penalty: 20 penalty units.

- (5) In this section *occupation day* means a day that is the agreed day on which the tenant is to enter into occupation of the premises.

67 Quiet enjoyment

A landlord must take all reasonable steps to ensure that the tenant has quiet enjoyment of the rented premises during the tenancy agreement.

68 Landlord's duty to maintain premises

- (1) A landlord must ensure that the rented premises are maintained in good repair.
- (2) A landlord is not in breach of the duty to maintain the rented premises in good repair if—
- (a) damage to the rented premises is caused by the tenant's failure to ensure that care was taken to avoid damaging the premises; and
 - (b) the landlord has given the tenant a notice under section 78 requiring the tenant to repair the damage.
- (3) If a landlord owns or controls rented premises and the common areas relating to those rented premises, the landlord must take reasonable steps to ensure that the common areas are maintained in good repair.

S. 68(3)
inserted by
No. 45/2002
s. 16.

69 Landlord must ensure rating compliance for replacement water appliances

A landlord must ensure that if an appliance, fitting or fixture provided by the landlord that uses or supplies water at the rented premises needs to be

S. 69
(Heading)
inserted by
No. 32/2010
s. 79(1).
S. 69
amended by
No. 32/2010
s. 79(2).

replaced, the replacement has at least a prescribed level of rating in a prescribed rating system.

70 Locks

- (1) A landlord must provide locks to secure all external doors and windows of the rented premises.
- (2) A party to a tenancy agreement who changes any external door or window lock must as soon as practicable give a key to the lock to the other party.
- (3) A tenant who wishes to change a lock in a master key system must obtain the landlord's consent before changing that lock.
- (4) A landlord must not unreasonably withhold consent to the changing of the lock.

S. 70(5)
amended by
No. 52/2008
s. 258.

- (5) In this section and sections 70A and 71—
key of a lock means a device or information normally used to operate the lock;
lock means a device for securing a door or window or other part of premises;
master key system means a set of locks in which—
 - (a) each lock or sub-set of locks has a unique key; and
 - (b) one single key or master key can operate all the locks in the set.

70A Locks for rented premises the subject of an intervention order

(1) This section applies if—

S. 70A
(Heading)
amended by
No. 53/2010
s. 221(Sch.
item 9.3) (as
amended by
No. 20/2011
s. 10(3)).
S. 70A
inserted by
No. 52/2008
s. 259.

(a) a tenant is excluded from rented premises because of an exclusion condition included in a family violence intervention order, family violence safety notice or non-local DVO that is a recognised DVO or a personal safety intervention order; and

S. 70A(1)(a)
amended by
Nos 53/2010
s. 221(Sch.
item 9.4(a)),
53/2016
s. 117(1).

(b) a protected person under the family violence intervention order, family violence safety notice or non-local DVO that is a recognised DVO or a personal safety intervention order—

S. 70A(1)(b)
amended by
Nos 53/2010
s. 221(Sch.
item 9.4(a)),
53/2016
s. 117(1).

(i) is also a party to the tenancy agreement for the rented premises; or

(ii) has been residing in the rented premises as the protected person's principal place of residence but is not a party to the tenancy agreement.

(2) The protected person may change any external door or window lock, including a lock in a master key system, of the rented premises, whether or not the protected person is a party to the tenancy agreement.

(3) As soon as practicable after the protected person changes any external door or window lock, the protected person must—

S. 70A(3)(a)(ii)
amended by
Nos 53/2010
s. 221(Sch.
item 9.4(a)),
53/2016
s. 117(1).

- (a) give the landlord or landlord's agent—
 - (i) a key to the lock; and
 - (ii) either a certified extract of the family violence intervention order, family violence safety notice or non-local DVO that is a recognised DVO or a personal safety intervention order or a copy of the order or notice; and
 - (b) give a key to the lock to the parties to the tenancy agreement, other than the excluded tenant.
- (4) The protected person is not required to give the excluded tenant a key to the lock—

S. 70A(4)(a)
amended by
No. 53/2010
s. 221(Sch.
item 9.4(b)),
substituted by
No. 53/2016
s. 117(2)(a).

- (a) in the case of a family violence intervention order, a non-local DVO made by a court that is a recognised DVO or a personal safety intervention order, unless the exclusion condition in the order ends;

S. 70A(4)(b)
substituted by
No. 53/2016
s. 117(2)(b).

- (b) in the case of a family violence safety notice or non-local DVO made by a police officer that is a recognised DVO, until the notice or DVO ends.

S. 70A(5)
amended by
Nos 53/2010
s. 221(Sch.
item 9.4(a)),
53/2016
s. 117(1).

- (5) A landlord or landlord's agent must not give the excluded tenant any key provided under subsection (3)(a) if he or she knows that the tenant has been excluded from the rented premises under a family violence intervention order, family violence safety notice or non-local DVO that is a recognised DVO or a personal safety intervention order.

- (6) If a certified extract or a copy of a notice or order has been given to a landlord or landlord's agent under subsection (3)(a)(ii), the landlord and landlord's agent are taken to know that the tenant has been excluded from the rented premises.
- (7) A landlord or landlord's agent may only disclose, or give a copy of, a certified extract or a copy of a notice or order received under subsection (3)(a)(ii) to—
 - (a) if given to the landlord, the landlord's agent;
 - (b) if given to the landlord's agent, the landlord;
 - (c) in either case, the legal representative of the landlord or landlord's agent;
 - (d) any other person as prescribed.
- (8) This section applies despite anything in section 70.

71 Application to Tribunal to change locks without consent

- (1) A tenant may apply to the Tribunal for a determination that the consent of the landlord to the changing of a lock is not required if—
 - (a) the landlord withholds consent; and
 - (b) the tenant believes that the withholding of the consent is unreasonable.
- (2) If, after giving each party an opportunity to be heard, the Tribunal determines that consent is not required, the tenant may change the lock without the landlord's consent.

Division 5B—Pets

Pt 2 Div. 5B
(Heading and
ss 71A–71E)
inserted by
No. 47/2019
s. 47.

S. 71A
inserted by
No. 47/2019
s. 47.

71A Tenant may keep a pet at rented premises with consent or Tribunal order

A tenant may keep a pet at the rented premises if—

- (a) the landlord has consented in writing to the tenant keeping the pet on the premises; or
- (b) the Tribunal has made an order permitting the tenant to keep the pet on the rented premises.

Note

A landlord is taken to have consented to a request to keep a pet on the rented premises unless, within 14 days of being given the request, the landlord makes an application to the Tribunal—see section 71C(2).

S. 71B
inserted by
No. 47/2019
s. 47.

71B Tenant's request for consent to keep pet on rented premises

- (1) A tenant who requests the landlord's consent to keep a pet on the rented premises must do so in the form approved by the Director.
- (2) A tenant who makes a request under subsection (1) must give the request to the landlord.

S. 71C
inserted by
No. 47/2019
s. 47.

71C Landlord must not unreasonably refuse consent to keep a pet on rented premises

- (1) A landlord must not unreasonably refuse to consent to the tenant keeping a pet on the rented premises.
- (2) The landlord is taken to have consented to a request to the keeping of a pet on the rented

premises unless, within 14 days after being given the request, the landlord applies to the Tribunal under section 71D.

71D Application to refuse consent to keep a pet on rented premises or exclude a pet from rented premises

S. 71D
inserted by
No. 47/2019
s. 47.

- (1) A landlord may apply to the Tribunal for an order that it is reasonable for the landlord to refuse consent to keep the pet on the rented premises.
- (2) A landlord who reasonably believes a tenant is keeping a pet on the rented premises without the landlord's consent may apply to the Tribunal for an order to exclude the pet from the rented premises.

71E Tribunal orders—pets

S. 71E
inserted by
No. 47/2019
s. 47.

- (1) On an application under section 71D, the Tribunal may make—
 - (a) an order that the tenant is permitted to keep the pet on the rented premises; or
 - (b) if satisfied that it is reasonable to refuse consent to the keeping of the pet on the rented premises, the following—
 - (i) an order that it is reasonable to refuse consent to the keeping of the pet on the rented premises;
 - (ii) an order excluding the pet from the rented premises.
- (2) In determining an application under section 71D, the Tribunal may have regard to the following matters—
 - (a) the type of pet the tenant proposes to keep, or is keeping, on the rented premises;
 - (b) the character and nature of the rented premises;

- (c) the character and nature of the appliances, fixtures and fittings on the rented premises;
 - (d) whether refusing consent to keep the pet on rented premises is permitted under any Act;
 - (e) any prescribed matters;
 - (f) any other matter the Tribunal considers relevant.
- (3) If the Tribunal makes an order excluding the pet from the rented premises, the Tribunal must specify the date on which the order takes effect.

Division 6—Repairs and maintenance

72 Urgent repairs

- (1) A tenant may arrange for urgent repairs to be carried out to the rented premises if—
- (a) the tenant has taken reasonable steps to arrange for the landlord or the landlord's agent to immediately carry out the repairs; and
 - (b) the tenant is unable to get the landlord or agent to carry out the repairs.
- (2) If the tenant carries out repairs under subsection (1)—
- (a) the tenant must give the landlord 14 days written notice of the repairs carried out and the cost; and
 - (b) the landlord is liable to reimburse the tenant for the reasonable cost of the repairs or \$1000, or if a greater amount is prescribed for the purposes of this section, that prescribed amount, (which includes any amount in respect of any GST payable on the supply to which the urgent repairs relate), whichever is less.

S. 72(2)(b)
amended by
No. 67/2010
s. 167(1).

- (3) If urgent repairs are required to an item that uses or supplies water and that item does not have at least a prescribed level of rating in a prescribed rating system, and that item cannot be repaired, the tenant may replace it with an item that has a rating that is of or above a prescribed level of rating in a prescribed rating system.
- (4) This section does not apply to fixtures, furniture or equipment supplied by the tenant.

S. 72(3)
substituted by
No. 32/2010
s. 79(3).

73 Application to Tribunal for urgent repairs

- (1) A tenant may apply to the Tribunal for an order requiring the landlord or the landlord's agent to carry out specified urgent repairs if—
- (a) the tenant cannot meet the cost of the repairs;
or
 - (b) the repairs cost more than \$1000, or if a greater amount is prescribed for the purposes of this section, that prescribed amount, (which includes any amount in respect of any GST payable on the supply to which the urgent repairs relate); or
 - (c) the landlord refuses to pay the cost of the urgent repairs if carried out by the tenant.
- (2) The Tribunal must hear an application under subsection (1) within 2 business days after the application is made.

S. 73(1)(b)
amended by
No. 67/2010
s. 167(2).

74 Application to Director to investigate need for non-urgent repairs

- (1) A tenant may apply to the Director to investigate whether the landlord is in breach of a duty to ensure that the premises are maintained in good repair if—

- (a) the tenant has given the landlord written notice advising the landlord that repairs (other than urgent repairs) are required to the rented premises; and
 - (b) the landlord has not carried out the repairs within 14 days after being given the notice.
- (2) An application under subsection (1) must be in writing.
- (3) On an application under subsection (1), the Director—
 - (a) must investigate; and
 - (b) may negotiate arrangements for the carrying out of repairs if the Director is satisfied that the landlord is in breach of the duty to maintain the rented premises in good repair; and
 - (c) must give a written report to the tenant.

75 Application to Tribunal for non-urgent repairs

- (1) A tenant may apply to the Tribunal for an order requiring the landlord to carry out specified repairs if—
 - (a) the tenant has received the report of the Director under section 74; and
 - (b) the tenant is still of the view that satisfactory arrangements have not been made for the carrying out of the repairs.
- (2) An application under subsection (1) must be made within 60 days of receiving the report of the Director under section 74.

S. 75(2)
amended by
No. 45/2002
s. 17.

S. 75(3)
repealed by
No. 52/1998
s. 236(b).

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* * * * *

S. 75(4)
repealed by
No. 52/1998
s. 236(c).

- (5) A tenant may apply to the Tribunal for an order requiring the landlord to carry out specified repairs without the report of the Director under section 74 if the tenant has not received that report within 90 days after the tenant applied for that report.

76 What can the Tribunal order?

- (1) The Tribunal may make an order requiring the landlord to carry out specified repairs if it is satisfied that the landlord is in breach of the duty to maintain the rented premises in good repair.
- (2) The order must specify the repairs and the time within which they must be carried out.

77 Payment of rent into Rent Special Account

- (1) If the tenant has given notice requiring repairs to be carried out to the rented premises, the tenant may apply to the Tribunal for an order authorising the tenant to pay the rent under the tenancy agreement into the Rent Special Account.
- (2) The Tribunal may make an order authorising the tenant to pay the rent into the Rent Special Account for a period specified by the Tribunal if it is satisfied that—
- (a) a notice requiring the carrying out of repairs has been given to the landlord in accordance with this Act; and
 - (b) the landlord has failed to comply with the duty to carry out the repairs.

- (3) If an order is made under subsection (2)—
 - (a) the amount of the rent held in the Rent Special Account at the end of that period must be paid to the landlord; and
 - (b) on application by the landlord, the Tribunal may order that the whole or such part of the rent as it may determine be paid to the landlord before the end of that period, if it is satisfied that the landlord has fulfilled or is fulfilling the landlord's duty to carry out repairs to the premises.

78 Landlord may give tenant repair notice

- (1) A landlord may give a repair notice to a tenant if damage is caused to the rented premises because of a failure of the tenant to comply with section 61(1).
- (2) The repair notice must be in writing and must state—
 - (a) the nature of the damage; and
 - (b) that the damage was caused by the failure of the tenant to ensure that care was taken to avoid damaging the premises; and
 - (c) if the landlord wishes the tenant to repair the damage—
 - (i) that the landlord requires the tenant to repair the damage at the tenant's expense within 14 days after the giving of notice by the landlord; and
 - (ii) that if the tenant has not repaired the damage in a tradesman-like manner within that period, the landlord may repair the damage at the tenant's expense; and

- (d) if the landlord wishes to repair the damage, that the landlord is undertaking the repairs and the tenant is liable for the reasonable cost of the repairs.

79 Landlord may do repairs and tenant liable for costs

- (1) If the landlord gives the tenant a repair notice under section 78 requiring the tenant to repair damage and the tenant has not repaired the damage in a proper and tradesman-like manner within 14 days after the giving of notice, the landlord may repair the damage at the tenant's expense.
- (2) If the landlord gives the tenant a repair notice under section 78 stating that the landlord is undertaking the repairs, the landlord may repair the damage at the tenant's expense as soon as practicable after giving the tenant the notice.
- (3) The tenant is liable to the landlord for the reasonable costs of repairs undertaken by the landlord under this section if the landlord gives the tenant particulars in writing of the cost of the repairs.

80 Declaration under Housing Act 1983 that house unfit for habitation

- (1) A landlord is in breach of section 68 if the rented premises are or are part of a house in respect of which a declaration under section 64 of the **Housing Act 1983** is in force.
- (2) A tenant is not entitled to exercise a right under sections 72 to 75 in respect of a breach resulting from a declaration referred to in subsection (1).

Division 7—Assignment and sub-letting

81 Assignment and sub-letting by a tenant

- (1) A tenant under a tenancy agreement must not assign or sub-let the whole or any part of the rented premises without the landlord's written consent.
- (2) A landlord must not unreasonably withhold consent to the assignment or sub-letting of the whole or any part of the rented premises.
- (3) An assignment or sub-letting of the whole or any part of the rented premises without the landlord's consent is invalid unless the Tribunal has determined that consent is not required.

**Note to s. 81
inserted by
No. 38/2018
s. 299.**

Note

In the case of a landlord who is an SDA provider, see Division 2 of Part 12A.

82 Tenant may apply to Tribunal

- (1) A tenant may apply to the Tribunal for a determination that the consent of the landlord to the assignment or sub-letting of the whole or any part of the rented premises is not required if—
 - (a) the landlord withholds consent; and
 - (b) the tenant believes that the withholding of the consent is unreasonable.
- (2) If, after giving each party an opportunity to be heard, the Tribunal determines that consent is not required, the assignment or sub-letting may go ahead without the landlord's consent.

83 Director of Housing may withhold consent in certain circumstances

For the purposes of this Division, it is not unreasonable for a landlord to withhold consent to an assignment or sub-letting of rented premises if—

- (a) the landlord is the Director of Housing; and
- (b) the ground for withholding that consent is that the assignment or sub-letting would disadvantage persons on a public housing waiting list.

84 Landlord cannot ask for fee for giving consent

- (1) A landlord must not—
 - (a) demand or receive a fee or payment for giving consent to the assignment or sub-letting of rented premises; or
 - (b) refuse to consent to an assignment or sub-letting of rented premises on the ground that the tenant has refused to pay a fee or amount for the consent.

S. 84(1)
amended by
No. 67/2010
s. 106.

Penalty: 20 penalty units.

- (2) If the tenant has paid the landlord a fee or amount for the consent to an assignment or sub-letting, the tenant may apply to the Tribunal for an order that the landlord refund to the tenant the amount of the payment.
- (3) This section does not prevent a landlord from requiring the tenant to bear any fees, costs or charges incurred by the landlord in connection with the preparation of a written assignment of a tenancy agreement.

Division 8—Rights of entry

85 Entry of rented premises

A landlord or the landlord's agent has a right to enter rented premises together with any persons who are necessary to achieve the purpose of the entry—

- (a) at any time agreed with the tenant if the tenant has consented not more than 7 days before the entry; or
- (b) for a purpose set out in section 86, at any time between 8 a.m. and 6 p.m. on any day (except a public holiday) if at least 24 hours notice has been given to the tenant in accordance with section 88.

86 Grounds for entry of rented premises

- (1) A right of entry in respect of rented premises may be exercised if—
 - (a) before giving notice of entry, a notice to vacate or a notice of intention to vacate the rented premises had been given and entry is required to show the premises to a prospective tenant; or
 - (b) the premises are to be sold or used as security for a loan and entry is required to show the premises to a prospective buyer or lender; or
 - (c) entry is required to enable the landlord to carry out a duty under this Act, the tenancy agreement or any other Act; or
 - (d) entry is required for valuation purposes; or
 - (e) the landlord or the landlord's agent has reasonable grounds to believe that the tenant has failed to comply with his or her duties under this Act or the tenancy agreement; or
 - (f) entry is required to enable inspection of the premises and entry for that purpose has not been made within the last 6 months; or
 - (g) entry is required to enable inspection of the premises for the purposes of proceedings arising from or relating to an application made under section 233A(3).

S. 86(1)(f)
amended by
No. 52/2008
s. 260(1).

S. 86(1)(g)
inserted by
No. 52/2008
s. 260(2).

- (2) A right of entry for a purpose set out in subsection (1)(a) may only be exercised in the period of 14 days before the termination date specified in the notice to vacate or notice of intention to vacate.
- (3) Despite subsection (1), in the case of the first tenancy agreement entered into between a landlord and a tenant in respect of rented premises, a right of entry referred to in subsection (1)(f) may only be exercised after the end of the first 3 months of the tenancy.
- (4) For the purposes of an inspection under subsection (1)(g), the excluded tenant may have a representative present at the inspection of the premises, but must provide the name and contact details of the representative to the landlord or landlord's agent before the inspection.

S. 86(3)
inserted by
No. 45/2002
s. 18.

S. 86(4)
inserted by
No. 52/2008
s. 260(3).

87 Manner of entry

A person exercising a right of entry under this Division—

- (a) must do so in a reasonable manner; and
- (b) must not stay or permit others to stay on the rented premises longer than is necessary to achieve the purpose of the entry without the tenant's consent.

88 What must be in a notice of entry?

A notice requiring entry must—

- (a) be in writing; and
- (b) state why the landlord or landlord's agent wishes to enter; and
- (c) be given—
 - (i) by post; or

S. 88(c)(ii)
amended by
No. 52/2008
s. 261(1).

S. 88(d)
inserted by
No. 52/2008
s. 261(2).

- (ii) by delivering it personally to the tenant between the hours of 8 a.m. and 6 p.m.; and
- (d) if entry is pursuant to section 86(1)(g), and the landlord has been given the name and contact details required under that paragraph, state the name of the excluded tenant's representative (if any).

89 Tenant has duty to permit entry

A tenant has a duty to permit a person exercising a right of entry in accordance with this Division to enter the rented premises.

90 What if damage is caused during entry?

- (1) A tenant may apply to the Tribunal for an order for compensation if the landlord or the landlord's agent or a person accompanying them causes damage to the tenant's goods on the rented premises when exercising a right of entry under section 85.
- (2) If an application is made under subsection (1), the Tribunal—
 - (a) may make an order for payment of any compensation that it thinks fit if it is satisfied that damage was caused to the tenant's goods on the rented premises; or
 - (b) may refuse to make an order.

91 What if a person exercising right of entry fails to comply with Division?

- (1) If the landlord or the landlord's agent has exercised a right of entry and in doing so fails to comply with this Division, the tenant may apply to the Tribunal for an order restraining the landlord and the landlord's agent from exercising a right of entry under section 85 for a specified period.

- (2) If an application is made under subsection (1), the Tribunal—
- (a) may make an order prohibiting the landlord and the landlord's agent from exercising a right of entry under section 85 (except for a purpose set out in section 86(1)(c) or (e)) during the period specified in the order if it is satisfied that it is reasonable to do so; or
 - (b) may refuse to make an order.

91A Offence relating to entering rented premises

A landlord or a landlord's agent must not, without reasonable excuse, enter rented premises otherwise than in accordance with this Division.

Penalty: 20 penalty units.

S. 91A
inserted by
No. 45/2002
s. 19,
amended by
No. 67/2010
s. 107.

Part 3—Rooming houses—Residency rights and duties

Division 1—Residency rights

92 Residency right

S. 92
amended by
No. 63/2005
s. 5 (ILA
s. 39B(1)).

- (1) Subject to this Act, a resident has the right—
- (a) to reside in the room that he or she occupies; and
 - (b) to use the facilities in the rooming house.

S. 92(2)
inserted by
No. 63/2005
s. 5.

- (2) A residency right may be an exclusive occupancy right or a shared room right.

S. 92(3)
inserted by
No. 63/2005
s. 5.

- (3) A residency right is an exclusive occupancy right unless—
- (a) the rooming house owner has given the resident a notice under section 92C specifying that the right is a shared room right before the resident commences occupation of the room; or
 - (b) the residency right becomes a shared room right under section 94B(2); or
 - (c) the residency right is deemed to be a shared room right under section 530.

S. 92A
inserted by
No. 63/2005
s. 6.

92A Exclusive occupancy right

- (1) An exclusive occupancy right gives a resident a right to exclusive occupancy of the room.

- (2) To avoid doubt it is declared that 2 or more residents may have exclusive occupancy of a room.

Example

Two domestic partners may share a room and have exclusive occupancy. A rooming house owner would not be able to introduce another person to share the room while the exclusive occupancy right exists.

92B Shared room right

A shared room right gives a resident a right to occupy the room together with one or more other residents chosen by the rooming house owner.

Example

A resident takes up occupancy of a room after being given notice under section 92C that the resident is to have a shared room right. Later that week, without notice to the existing resident, another resident takes up occupancy of the same room under a residency agreement. Each resident has a shared room right.

92C Notice to resident of residency right

- (1) A rooming house owner must give each proposed resident a notice in accordance with this section before the proposed resident commences occupation of a room.

Penalty: 10 penalty units.

- (2) The notice must—
- (a) be in writing in a form approved by the Director; and
 - (b) specify whether the residency right is to be an exclusive occupancy right or a shared room right; and
 - (c) state the date on which it is given; and

S. 92B
inserted by
No. 63/2005
s. 6.

S. 92C
inserted by
No. 63/2005
s. 7.

S. 92C(1)
amended by
No. 67/2010
s. 108.

- (d) state that it is given in accordance with this section.
- (3) If the residency right is to be a shared room right, the notice must also—
 - (a) specify the room capacity of the room; and
 - (b) state that the resident will not be notified before another resident takes up occupancy of the room; and
 - (c) state that the rooming house owner will choose the other residents who will be permitted to take up occupancy of the room; and
 - (d) specify the rent payable by the resident for the shared room right and the rent that would have been payable by the resident if the right had been an exclusive occupancy right.

93 Rights cannot be assigned

The rights conferred on a resident of a rooming house by this Act are not assignable or transferable.

94 Power to enter tenancy agreements or other agreements

S. 94(1)
amended by
No. 40/2018
s. 11(1).

- (1) Nothing in this Act affects the right of a resident and a rooming house owner to enter into a tenancy agreement for a fixed term not exceeding 5 years.

S. 94(1A)
inserted by
No. 45/2002
s. 28.

- (1A) If a tenancy agreement is entered into by a resident and a rooming house owner in respect of a room in a rooming house, the rooming house provisions do not apply to the occupation of that room by that resident while the tenancy agreement continues.

(2) A rooming house owner and a resident may enter an agreement (not being a tenancy agreement) specifying the terms and conditions of the resident's use and enjoyment of the rooming house.

(3) A term or condition in an agreement under subsection (2) that is inconsistent with this Act or that purports to restrict, exclude or modify the application of or exercise of a right conferred by this Act is invalid.

(3A) Despite subsections (1) and (1A), a resident cannot enter into a tenancy agreement with a rooming house owner in respect of a room unless the resident has or is to have exclusive occupancy of the room.

S. 94(3A)
inserted by
No. 63/2005
s. 8.

(3B) A rooming house owner and a resident cannot enter into a tenancy agreement for a fixed term of more than 5 years.

S. 94(3B)
inserted by
No. 40/2018
s. 11(2).

(4) In this section, *resident* includes a proposed resident.

94A Harsh and unconscionable terms

S. 94A
inserted by
No. 45/2002
s. 29.

(1) A resident may apply to the Tribunal for an order declaring invalid or varying a term of an agreement referred to in section 94(2).

(2) On an application under subsection (1), the Tribunal, by order, may declare invalid or vary a term of the agreement if it is satisfied that the term is harsh or unconscionable or is such that a court exercising its equitable jurisdiction would grant relief.

(3) An order under this section has effect according to its terms.

Division 1A—Shared room rights

Pt 3 Div. 1A
(Heading and
ss 94B–94D)
inserted by
No. 63/2005
s. 9.

S. 94B
inserted by
No. 63/2005
s. 9.

94B Consent required for increase in room capacity

S. 94B(1)
amended by
No. 67/2010
s. 109.

- (1) A rooming house owner must not increase the room capacity of a room that is occupied by one or more residents unless—
 - (a) the rooming house owner has first given each existing resident of the room notice of the proposed increase in accordance with section 94C; and
 - (b) each existing resident of the room has consented to that increase in room capacity in accordance with section 94D; and
 - (c) each consent has taken effect.

Penalty: 60 penalty units.

- (2) If a resident who has an exclusive occupancy right consents under section 94D to an increase in room capacity, that residency right becomes a shared room right when that consent takes effect.

S. 94C
inserted by
No. 63/2005
s. 9.

94C Notice of increase in room capacity

- (1) A notice given by a rooming house owner under section 94B must—
 - (a) be in writing in a form approved by the Director; and
 - (b) state the date on which it is given; and
 - (c) state that it is given under section 94B; and

- (d) state that the rooming house owner is seeking the consent of the resident to increase the room capacity of the room; and
- (e) specify the total number of people who are proposed to be accommodated in the room; and
- (f) state that if the resident consents to the increased room capacity of the room—
 - (i) the resident will not be notified before another resident takes up occupancy of the room; and
 - (ii) the rooming house owner will choose the other residents who will be permitted to take up occupancy of the room; and
- (g) state the existing rent paid by the resident; and
- (h) state the new reduced rent that will be payable by the resident if the resident consents to the increase in the room capacity of the room; and
- (i) state that any consent of the resident must be in writing; and
- (j) state that the resident may withdraw that consent at any time within the period of 3 days following the giving of the consent; and
- (k) state that if consent is given, the consent will take effect at the end of the period of 7 days after—
 - (i) if there is only one resident of the room, the consent is given; or

- (ii) if there is more than one resident of the room, the consent of the last resident is given; and
- (1) state that when the consent takes effect—
 - (i) the increase in room capacity also takes effect; and
 - (ii) the new reduced rent also takes effect.
- (2) A notice given by the rooming house owner under section 94B ceases to have effect 14 days after it is given.
- (3) A notice given by a rooming house owner under section 94B is invalid if—
 - (a) it fails to state the new reduced rent payable by the resident or otherwise fails to comply with subsection (1); or
 - (b) the proposed room capacity of the room will exceed the number of persons permitted by law to be accommodated in the room.

S. 94D
inserted by
No. 63/2005
s. 9.

94D Consent of resident to increased room capacity

- (1) A resident who receives a notice under section 94B may consent to the increase in room capacity.
- (2) A consent must—
 - (a) be in writing; and
 - (b) must specify the increased room capacity to which consent is given; and
 - (c) be signed by the resident; and
 - (d) be dated with the date of signing.
- (3) A resident may withdraw a consent he or she gives under this section by giving written notice of that withdrawal to the rooming house owner within 3 days after the consent is given.

- (4) A consent under this section to an increase in the room capacity of a room does not take effect until the end of the period of 7 days after—
 - (a) if there is only one resident of the room, the consent is given; or
 - (b) if there is more than one resident of the room, the consent of the last resident is given.
- (5) A consent under this section is of no effect if the notice under section 94B is invalid.

Division 2—Bonds

95 Payment of bond

A rooming house owner may require a resident or proposed resident to pay a bond before the resident commences occupation of a room as a resident.

**S. 95
amended by
No. 45/2002
s. 30.**

96 What is the maximum bond?

A rooming house owner must not demand or accept a bond that exceeds the equivalent of 14 days rent.

Penalty: 20 penalty units.

**S. 96
amended by
No. 67/2010
s. 110.**

97 Condition report

- (1) If a resident or proposed resident pays a bond, the rooming house owner must, before the resident or proposed resident commences occupation of the room as a resident, give the resident or proposed resident 2 copies of a condition report signed by or on behalf of the owner specifying the state of repair and general condition of the room on the day specified in the report.

Penalty: 10 penalty units.

**S. 97(1)
amended by
Nos 45/2002
s. 31(1),
67/2010 s. 111.**

S. 97(2)
amended by
No. 45/2002
s. 31(2).

- (2) Within 3 business days after commencing occupation of the room as a resident, the resident must return one copy of the condition report to the rooming house owner—
- (a) signed by or on behalf of the resident; or
 - (b) with an endorsement so signed to the effect that the resident agrees or disagrees with the whole or any specified part of the report.

98 Condition report is evidence of state of repair

- (1) A statement in a condition report under section 97 is conclusive evidence, for the purposes of this Act, of the state of repair or general condition of the room on the day specified in the report if the report is signed by or on behalf of the rooming house owner and the resident.
- (2) Subsection (1) does not apply to—
- (a) a state of repair or general condition that could not reasonably have been discovered on a reasonable inspection of the room; or
 - (b) a statement with which the resident disagrees under an endorsement on the report.

Division 3—Rent

99 Limit on rent in advance

S. 99
amended by
No. 67/2010
s. 112.

A rooming house owner must not require a resident to pay rent more than 14 days in advance.

Penalty: 20 penalty units.

100 Receipts for rent

S. 100(1)
amended by
No. 67/2010
s. 113.

- (1) A person who receives a payment of rent from a resident of a rooming house must give a written receipt in accordance with this section to the person making the payment—

- (a) immediately, if the payment is made in person; or
- (b) if the payment is not made in person and a receipt is requested at the time of making the payment, within 5 business days of receiving the payment.

Penalty: 10 penalty units.

- (2) If a person receives a payment of rent from a resident of a rooming house and a written receipt is not required to be given under subsection (1), the person must keep a record of the payment of rent until the earlier of—

S. 100(2)
substituted by
No. 45/2002
s. 32,
amended by
No. 67/2010
s. 113.

- (a) the end of 12 months after receiving the payment; or
- (b) if a resident requests a copy of the record before the end of 12 months after making the payment, the provision of a copy of the record to the resident.

Penalty: 10 penalty units.

- (2A) If a resident of a rooming house requests a copy of a record under subsection (2)(b) before the end of 12 months after making the payment of rent, a person who keeps a record under subsection (2) must provide a copy of that record to the resident within 5 business days after receiving the request.

S. 100(2A)
inserted by
No. 45/2002
s. 32,
amended by
No. 67/2010
s. 113.

Penalty: 10 penalty units.

- (2B) For the purposes of subsection (2), a record must contain information which enables the details specified in paragraphs (a) to (e) of subsection (3) to be identified.
- (3) A receipt under this section must be signed by the person who receives the payment and must state—
- (a) the name of the resident and the rooming house; and

S. 100(2B)
inserted by
No. 45/2002
s. 32.

- (b) the date of receipt; and
 - (c) the period for which payment is made; and
 - (d) the amount paid; and
 - (e) the fact that the payment is for rent.
- (4) The regulations may provide that a prescribed person is exempt from subsection (1), (2) or (3) subject to the conditions, if any, specified in the regulations.

101 How much notice of rent increase is required?

S. 101(1)
amended by
No. 45/2002
s. 33(1)(a).

- (1) Subject to subsection (3), a rooming house owner must give a resident at least 60 days notice in the prescribed form of a proposed rent increase.
- (2) A notice of a proposed rent increase under subsection (1) may only provide for one rent increase.
- (3) If a rooming house owner provides additional services to the resident at the resident's request, the owner may increase the rent by an amount agreed between them from the time that the additional services are provided without giving the notice required under subsection (1).
- (4) An agreement under subsection (3) must—
 - (a) be in writing; and
 - (b) be signed by the resident and the rooming house owner; and
 - (c) specify—
 - (i) the additional services to be provided; and
 - (ii) the amount of the increase; and
 - (iii) the date the increase will start to apply.

(5) The notice of a proposed rent increase must include a statement informing the resident of the resident's right under section 102 to apply within 30 days after the notice is given to the Director to investigate and report on the proposed rent.

S. 101(5)
amended by
No. 45/2002
s. 33(1)(b).

(5A) A rooming house owner must not increase the rent payable by a resident at intervals of less than 6 months.

S. 101(5A)
inserted by
No. 45/2002
s. 33(2).

(6) A rent increase in contravention of this section is invalid.

102 Resident may complain to Director about excessive rent

(1) A resident of a rooming house may apply to the Director to investigate and report if the resident has received a notice of a rent increase and the resident considers that the proposed rent is excessive.

(1A) A resident of a rooming house may apply to the Director to investigate and report if—

S. 102(1A)
inserted by
No. 63/2005
s. 10(1).

(a) the resident's rent has been reduced as a result of an increase in the room capacity of the resident's room; and

(b) the resident considers that the reduction is insufficient and the rent is excessive.

(2) An application under subsection (1) must be made in writing within 30 days after the notice of the rent increase is given.

(2A) An application under subsection (1A) must be made in writing within 30 days after the notice of the proposed increase in room capacity was given to the resident under section 94B.

S. 102(2A)
inserted by
No. 63/2005
s. 10(2).

(3) As soon as practicable after receiving an application, the Director must—

(a) carry out an investigation; and

(b) give a written report to the resident and a copy of the report to the rooming house owner.

(4) The report of the Director must—

(a) include a statement informing the resident of the resident's right under section 103 to apply to the Tribunal for an order in respect of the proposed rent; and

(b) take into account the matters referred to in section 104(3).

S. 102A
inserted by
No. 67/2010
s. 74.

102A Director may investigate rent without application by resident

(1) If the Director considers it appropriate to do so, the Director may investigate—

(a) if a resident of a rooming house has received a notice of a rent increase, whether the proposed rent is excessive; or

(b) if a resident's rent has been reduced as a result of an increase in the room capacity of the resident's room, whether the reduction is insufficient and the rent is excessive.

(2) If the Director carries out an investigation under subsection (1), the Director must give a written report to the resident and a copy of the report to the rooming house owner.

(3) An investigation may be carried out under this section whether or not the resident of the rooming house applies for an investigation under section 102.

103 Application to Tribunal about excessive rent

(1) After receiving a report from the Director under section 102, the resident may apply to the Tribunal for an order declaring the proposed rent excessive.

(2) An application under subsection (1) must—

- (a) be made within 30 days after the resident receives the Director's report;

S. 103(2)(a)
amended by
No. 52/1998
s. 236(d)(i).

* * * * *

S. 103(2)(b)
repealed by
No. 52/1998
s. 236(d)(ii).

104 What can the Tribunal order?

(1) If an application is made under section 103, the Tribunal may—

(a) make an order—

(i) declaring the proposed rent excessive;
and

(ii) directing that for the period specified in the order the rent must not exceed the amount specified in the order; or

(b) dismiss the application.

(2) The Tribunal must have regard to the Director's report obtained under section 102 in determining the application.

(3) The Tribunal must make an order declaring the proposed rent excessive if it is satisfied that the proposed rent is more than that which should reasonably be paid by a resident having regard to—

(a) the rent payable for a similar room in the rooming house;

(b) the rent payable for a similar room in a similar rooming house in a similar location;

(ba) in the case of a shared room, the rent payable by each resident of a similar shared room in the rooming house;

S. 104(3)(ba)
inserted by
No. 63/2005
s. 11(1).

S. 104(3)(bb)
inserted by
No. 63/2005
s. 11(1).

- (bb) in the case of a shared room, the rent payable by each resident of a similar shared room in a similar rooming house in a similar location;
- (c) the state of repair and general condition of the room and the rooming house;
- (d) any variation in the cost of providing facilities and services in the rooming house;
- (e) any changes in the rent and the condition of the room or facilities since the resident first occupied the room and since the last rent increase;

S. 104(3)(ea)
inserted by
No. 45/2002
s. 34.

- (ea) the number of rent increases (if any) in the preceding 24 months, the amount of each rent increase in that period and the timing of those increases;

S. 104(3)(f)
substituted by
No. 63/2005
s. 11(2).

- (f) any improvements made to the room that should not be considered in calculating the rent because they were made by the resident.

- (4) If the Tribunal makes an order under subsection (1)(a) in relation to a room, the rooming house owner cannot require the resident to pay an amount of rent greater than that specified in the order for a period of 6 months after the day on which the order comes into operation.
- (5) The amount specified in the order must not be less than the amount payable by the resident immediately before the notice was given under section 101.

S. 104(6)
inserted by
No. 63/2005
s. 11(3).

- (6) Subsection (5) does not apply if the order relates to an application made under section 103 in relation to a reduction in rent following an increase in the room capacity of a resident's room.

105 Payment of increased rent pending Tribunal decision

- (1) Pending the Tribunal's decision under section 104 in respect of an increase in rent, the resident must pay, from the time that the proposed increase is to apply—
- (a) the increased rent specified in the notice under section 101; or
 - (b) 110% of the rent immediately before the notice was given—
- whichever is less.
- (1A) Pending the Tribunal's decision under section 104 in respect of a reduction in rent for a shared room, the resident must pay, from the time that the reduced rent is to apply, the reduced rent specified by the rooming house owner in the notice given under section 94B.
- (2) If the Tribunal makes an order under section 104 in respect of an increase in rent, it may also order that any excess rent paid by the resident from the time the increase took effect until the date of the order be refunded by the rooming house owner.
- (2A) If the Tribunal makes an order under section 104 in respect of a reduction in rent for a shared room, it may also order that any excess rent paid by the resident from the date that the relevant increase in room capacity took effect until the date of the order be refunded by the rooming house owner.
- (3) The order may specify the procedure for the refund to the resident.

S. 105(1)
amended by
No. 63/2005
s. 12(1).

S. 105(1A)
inserted by
No. 63/2005
s. 12(2).

S. 105(2)
amended by
No. 63/2005
s. 12(3).

S. 105(2A)
inserted by
No. 63/2005
s. 12(4).

S. 106
amended by
No. 45/2002
s. 35 (ILA
s. 39B(1)).

106 Rent must be reduced if services are reduced

- (1) If a rooming house owner ceases to provide services to a resident, the rooming house owner must reduce the rent by—
- (a) the amount agreed between them; or
 - (b) an amount determined by the Tribunal in the absence of any agreement on an application by either party.

S. 106(2)
inserted by
No. 45/2002
s. 35.

- (2) If the Tribunal determines an amount under subsection (1)(b), it may also order that—
- (a) the reduction in rent is to take effect from the time the rooming house owner ceased to provide services to the resident; and
 - (b) the rooming house owner is to refund to the resident any excess rent paid by the resident from the time the rooming house owner ceased to provide services until the date of the order.

S. 106A
inserted by
No. 63/2005
s. 13.

106A Rent must be reduced if room capacity increased

If the room capacity of a room is increased under section 94B, the rooming house owner must reduce the rent payable by each person who is a resident of the room on the date that the consent to the increase in room capacity takes effect to the reduced rent specified in the notice given to the resident under that section.

S. 107
amended by
No. 67/2010
s. 114.

107 Resident's goods not to be taken for rent

A person must not take or dispose of a resident's goods on account of any rent owing by the resident of the rooming house.

Penalty: 20 penalty units.

Division 4—Other charges

108 Separately metered rooms

- (1) A rooming house owner may charge a resident a charge not included in rent for electricity and gas consumed in the room if—
 - (a) the rooming house owner is responsible for the payment of the electricity and gas; and
 - (b) the room is separately metered.
- (2) A charge under subsection (1) must not be more than the charge made by the relevant supplier of the utility.
- (3) This section does not apply to a resident of a shared room.

S. 108(2)
amended by
No. 45/2002
s. 36.

S. 108(3)
inserted by
No. 63/2005
s. 14.

109 Schedule of services provided to be given to resident

If a rooming house owner charges an amount for services to a resident, the owner must—

- (a) provide the resident with a separate schedule of the amount relating to the services that the rooming house owner provides before the resident takes up residency of the room; and
- (b) if the resident uses any of those services, provide the resident with an itemised account showing the resident's individual use of the services.

109A Director of Housing may impose service charge on resident

S. 109A
inserted by
No. 45/2002
s. 37.

- (1) The Director of Housing may impose a service charge on a resident in a rooming house which has been declared to be a rooming house under section 19(2) or (3) for any water, central heating, laundry or utility services or facilities made available to the resident.

- (2) Subsection (1) only applies if it is not possible or practicable to accurately measure the use by the resident of that service or facility.
- (3) A service charge may be increased or decreased by an amount in line with changes in the cost of providing the services or facilities.
- (4) In this section *Director of Housing* includes any incorporated body that receives financial assistance from the Director of Housing for the purposes of providing non-profit housing.

Division 5—General duties of residents and rooming house owners

110 Resident's use of room

A resident must use the room for residential purposes only.

S. 111
amended by
No. 63/2005
s. 15(1)(2) (ILA
s. 39B(1)).

111 Resident must not use room for illegal purposes

- (1) In the case of a room other than a shared room, a resident must not use the room or permit its use for any purpose that is illegal at common law or under an Act.
- (2) A resident of a shared room must not use the room or permit his or her visitors to use the room for any purpose that is illegal at common law or under an Act.

S. 111(2)
inserted by
No. 63/2005
s. 15(2).

S. 112
amended by
No. 63/2005
s. 16(1)(2) (ILA
s. 39B(1)).

112 Resident's duty to pay rent

- (1) Subject to subsection (2), a resident must pay the agreed rent to the rooming house owner on the due date and in the agreed manner.
- (2) Despite subsection (1), if a rooming house owner contravenes section 94B or 529 by permitting an additional person to occupy a room in the rooming house, an existing resident of the room at the date that the additional person commenced occupation

S. 112(2)
inserted by
No. 63/2005
s. 16(2).

of the room is not liable to pay rent for his or her occupancy of the room in respect of the period commencing on that date and ending on the first of the following to occur—

- (a) the date that the room capacity of the room is reduced to the room capacity existing immediately before the additional person commenced occupation of the room; or
- (b) the date that the consent of the existing resident of the room to the increase in room capacity under section 94D takes effect.

113 Quiet enjoyment—resident's duty

S. 113
amended by
No. 63/2005
s. 17 (ILA
s. 39B(1)).

- (1) A resident must not do anything in or near the rooming house or allow his or her visitors to the rooming house to do anything which interferes with the privacy and peace and quiet of the other residents or their proper use and enjoyment of the rooming house.
- (2) A resident of a shared room does not breach a duty under this section simply by sharing the room with another resident.

S. 113(2)
inserted by
No. 63/2005
s. 17.

114 Resident must keep room in clean condition

A resident must keep the room clean and in a condition which will not create a fire or health hazard.

115 Resident must not install fixtures without consent

A resident must not install any fixtures in the room or rooming house without the prior written consent of the rooming house owner.

116 Resident must notify owner of and compensate for damage

- (1) If any damage other than fair wear and tear is caused to the room or rooming house by the resident or his or her visitors, the resident must notify the rooming house owner of the damage and pay compensation for the damage to the rooming house owner.
- (2) A resident must report to the rooming house owner any damage to or breakdown of facilities, fixtures, furniture or equipment provided by the rooming house owner of which the resident has knowledge.

117 Resident must not keep pet without consent

A resident must not keep an animal on the premises of the rooming house without the rooming house owner's consent.

118 Resident must give key to owner

A resident must give the rooming house owner a key to the door to the room to allow access as permitted by this Act.

119 Resident must observe house rules

A resident must observe all house rules made from time to time in accordance with this Act.

120 Rooming house owner must keep room and house in good repair

- (1) A rooming house owner must ensure that the rooming house and its rooms and any facilities, fixtures, furniture or equipment provided by the rooming house owner are maintained in good repair.

- (2) If a rooming house owner is repairing or renovating residents' facilities, the owner must—
 - (a) minimise inconvenience and disruption to the residents; and
 - (b) if necessary, provide temporary substitute facilities.

120A Rooming house owner must comply with rooming house standards

S. 120A
inserted by
No. 56/2012
s. 4.

- (1) A rooming house owner must ensure that a room provided to a resident of a rooming house complies with any applicable rooming house standard.
- (2) A rooming house owner must ensure that a facility or service provided to a resident of a rooming house complies with any applicable rooming house standard.
- (3) A rooming house owner must ensure that a common area provided for access by a resident of a rooming house complies with any applicable rooming house standard.

121 Rooming house owner must provide access

A rooming house owner must—

- (a) provide a resident with 24 hour access to his or her room and the toilet and bathroom facilities;
- (b) provide access during all reasonable hours to other facilities for the resident's use in the rooming house.

122 Quiet enjoyment—rooming house owner's duty

S. 122
amended by
No. 63/2005
s. 18 (ILA
s. 39B(1)).

- (1) A rooming house owner must not unreasonably restrict or interfere with a resident's privacy, peace and quiet or proper use and enjoyment of his or her room and the facilities for the residents' use in the rooming house.

S. 122(2)
inserted by
No. 63/2005
s. 18.

- (2) A rooming house owner must take all reasonable steps to ensure that a resident of a shared room does not do anything or permit his or her visitors to do anything that interferes with the privacy, peace and quiet of, or the proper use and enjoyment of the room by, other residents of the room.

S. 122(3)
inserted by
No. 63/2005
s. 18.

- (3) A rooming house owner does not breach a duty under subsection (1) simply by permitting more than one resident to occupy a shared room in accordance with this Part.

123 Security

A rooming house owner must take all reasonable steps to ensure security for the property of a resident in his or her room.

S. 124
amended by
No. 67/2010
s. 115.

124 Display of statement of rights and house rules

A rooming house owner must display prominently in each resident's room and, not later than the day on which a resident agrees to take up occupation, give the resident—

- (a) a written statement in a form approved by the Director setting out in summary form the resident's rights and duties under this Act; and
- (b) a copy of the house rules.

Penalty: 10 penalty units.

125 Owner to give additional information

S. 125(1)
amended by
No. 67/2010
s. 116.

- (1) If there is no agent acting for the rooming house owner, a rooming house owner must, on or before the occupation day, give the resident—
- (a) written notice of the rooming house owner's full name and address for the service of documents; and

- (b) an emergency telephone number to be used in the case of the need for urgent repairs.

Penalty: 60 penalty units.

- (2) If there is an agent acting for the rooming house owner, a rooming house owner must, on or before the occupation day, give the resident—

S. 125(2)
amended by
No. 67/2010
s. 116.

- (a) written notice of the agent's full name and address for service of documents and the agent's telephone number; and
- (b) a written statement setting out—
 - (i) whether or not the agent can authorise urgent repairs; and
 - (ii) if the agent can authorise urgent repairs, the maximum amount for repairs which the agent can authorise; and
 - (iii) the agent's telephone number for urgent repairs.

Penalty: 60 penalty units.

- (3) A rooming house owner must give the resident notice in writing of any change in the information set out in subsection (1) or (2) before the end of 7 days after the change.

S. 125(3)
amended by
No. 67/2010
s. 116.

Penalty: 60 penalty units.

- (4) In this section *occupation day* means a day that is the agreed day on which the resident is to take up occupation of a room.

126 House rules

A rooming house owner may make house rules relating to the use and enjoyment of facilities and rooms.

127 Duties relating to house rules

S. 127(1)
amended by
No. 67/2010
s. 117.

- (1) The rooming house owner must give a resident at least 7 days written notice of any proposed change in the house rules.

Penalty: 10 penalty units.

- (2) A rooming house owner must—
- (a) take all reasonable steps to ensure that the house rules are observed by all residents; and
 - (b) ensure that the house rules are reasonable and are enforced and interpreted consistently and fairly.

128 What if house rules are thought to be unreasonable?

- (1) A resident may apply to the Tribunal for an order declaring a house rule to be unreasonable.

S. 128(2)
repealed by
No. 52/1998
s. 236(e).

* * * *

- (3) If the Tribunal considers that a house rule is unreasonable, it may declare the rule invalid.

Division 6—Repairs

129 Urgent repairs

- (1) A resident may arrange for urgent repairs to be carried out if—
- (a) the resident has taken reasonable steps to arrange for the rooming house owner or the rooming house owner's agent to immediately carry out the urgent repairs to the room or the rooming house; and
 - (b) the resident is unable to get the rooming house owner or the agent to carry out those repairs.

- (2) If the resident carries out repairs under subsection (1)—
- (a) the resident must give the rooming house owner 14 days written notice of the repairs carried out and the cost; and
 - (b) the rooming house owner is liable to reimburse the resident for the reasonable cost of the repairs or \$1000, or if a greater amount is prescribed for the purposes of this section, that prescribed amount, (which includes any amount in respect of any GST payable on the supply to which the urgent repairs relate), whichever is less.
- (3) This section does not apply—
- (a) to fixtures, furniture or equipment supplied by the resident; or
 - (b) if there is no immediate danger to health or safety and the resident is able to use other facilities in the rooming house.

S. 129(2)(b)
amended by
No. 67/2010
s. 168(1).

130 Application to Tribunal for urgent repairs

- (1) A resident may apply to the Tribunal for an order requiring the rooming house owner or the rooming house owner's agent to carry out specified urgent repairs if—
- (a) the resident cannot meet the cost of the repairs; or
 - (b) the repairs cost more than \$1000, or if a greater amount is prescribed for the purposes of this section, that prescribed amount, (which includes any amount in respect of any GST payable on the supply to which the urgent repairs relate); or
 - (c) the rooming house owner refuses to pay the cost of the urgent repairs.

S. 130(1)(b)
amended by
No. 67/2010
s. 168(2).

- (2) The Tribunal must hear an application under subsection (1) within 2 business days after the application is made.

131 Application to Director to investigate need for non-urgent repairs

- (1) A resident may apply to the Director to investigate whether the rooming house owner is in breach of a duty to ensure the room or the rooming house is maintained in good repair if—
- (a) the resident has given notice to the rooming house owner that repairs (other than urgent repairs) are required to the room or rooming house; and
 - (b) the rooming house owner has not carried out the repairs within 14 days after being given the notice.
- (2) An application under subsection (1) must be in writing.
- (3) On an application under subsection (1), the Director—
- (a) must investigate; and
 - (b) may negotiate arrangements for the carrying out of repairs if the Director is satisfied that the rooming house owner is in breach of the duty to maintain the room or rooming house in good repair; and
 - (c) must give a written report to the resident.

S. 131A
inserted by
No. 67/2010
s. 75.

131A Director may investigate rooming house without application by resident

- (1) If the Director considers it appropriate to do so, the Director may investigate whether a rooming house owner—

- (a) is in breach of a duty to ensure a room or rooming house is maintained in good repair; or
 - (b) has failed to comply with the standards of privacy, safety, security and amenity of a room, facility, service or common area of a rooming house prescribed for the purposes of Division 8 of this Part.
- (2) If the Director carries out an investigation under subsection (1), the Director—
 - (a) may negotiate arrangements for the carrying out of repairs if the Director is satisfied that the rooming house owner—
 - (i) is in breach of the duty to maintain the room or rooming house in good repair; or
 - (ii) has failed to comply with the standards prescribed for the purposes of Division 8 of this Part; and
 - (b) must give a written report to any resident affected by the breach or failure to comply, as the case requires, and a copy of the report to the rooming house owner.
- (3) An investigation may be carried out under this section whether or not the resident applies for an investigation under section 131.

132 Application to Tribunal for non-urgent repairs

- (1) A resident may apply to the Tribunal for an order requiring the rooming house owner to carry out specified repairs if—
 - (a) the resident has received the Director's report under section 131; and

- (b) the resident is still of the view that satisfactory arrangements have not been made for the carrying out of the repairs.
- S. 132(2)
repealed by
No. 52/1998
s. 236(f),
new s. 132(2)
inserted by
No. 45/2002
s. 38(1).
- (2) An application under subsection (1) must be made within 60 days of receiving the Director's report under section 131.
- S. 132(3)
repealed by
No. 52/1998
s. 236(f).
- * * * * *
- S. 132(4)
amended by
No. 45/2002
s. 38(2).
- (4) A resident may apply to the Tribunal for an order requiring the rooming house owner to carry out specified repairs without the Director's report under section 131 if the resident has not received that report within 90 days after the resident applied for that report.

133 What can the Tribunal order?

- (1) The Tribunal may make an order requiring the rooming house owner to carry out specified repairs if it is satisfied that the owner is in breach of the duty to maintain the room or rooming house in good repair.
- (2) The order must specify the repairs and the time within which they must be carried out.
- S. 133(3)
inserted by
No. 63/2005
s. 19.
- (3) If an order under this section in relation to a room is made on the application of a resident of a shared room, the Tribunal must include in the order a direction to the rooming house owner to give a copy of the order to each other resident of the shared room.

134 Payment of rent into Rent Special Account

- (1) If a resident has given notice under section 131 requiring repairs to be carried out, the resident may apply to the Tribunal for an order authorising the payment of the rent into the Rent Special Account.
- (2) The Tribunal may make an order authorising the resident to pay the rent into the Rent Special Account for a period specified by the Tribunal if it is satisfied that—
 - (a) a notice requiring the carrying out of repairs has been given to the rooming house owner in accordance with this Act; and
 - (b) the rooming house owner has failed to comply with the duty to carry out the repairs.
- (3) If an order is made under subsection (2)—
 - (a) the amount of the rent held in the Rent Special Account at the end of that period must be paid to the rooming house owner; and
 - (b) on application by the rooming house owner, the Tribunal may order that the whole or such part of the rent as it may determine be paid to the rooming house owner before the end of that period, if it is satisfied that the owner has fulfilled or is fulfilling the owner's duty to carry out the repairs.

135 Repair provisions not applicable to certain damage

Sections 131 to 134 do not apply to damage caused by the misuse or the negligence of the resident or his or her visitor.

Division 7—Rights of entry

136 Access to room

A rooming house owner or a person appointed in writing as the rooming house owner's agent for the purpose has a right to enter a room occupied by a resident—

S. 136(a)
amended by
No. 63/2005
s. 20(a).

- (a) if the resident, or in the case of a shared room, each resident of the room, agrees at the time entry is sought; or
- (b) if there is an emergency and immediate entry is necessary to save life or valuable property; or
- (c) if services are provided and it is necessary to enter to provide them, but only during the hours specified in the house rules; or

S. 136(d)
amended by
No. 63/2005
s. 20(b).

- (d) for a purpose set out in section 137, at any time between 8 a.m. and 6 p.m. on any day (except a public holiday) if at least 24 hours notice has been given to the resident, or in the case of a shared room, each resident of the room, in accordance with section 139.

137 Grounds for entry of a room

A right of entry in respect of a room may be exercised if—

- (a) before giving notice of entry, a notice to vacate or a notice of intention to vacate the room has been given and entry is required to show the room to a prospective resident; or
- (b) the rooming house is to be sold or used as security for a loan and entry is required to show the rooming house to a prospective buyer or lender; or

- (c) entry is required to enable the rooming house owner to carry out a duty under this Act or any other Act; or
- (d) the rooming house owner or the rooming house owner's agent has reasonable grounds to believe that a resident of the room has failed to comply with his or her duties under this Act; or
- (e) entry is required to enable inspection of the room and entry for that purpose has not been made within the last 4 weeks.

S. 137(d)
amended by
No. 63/2005
s. 21.

138 Manner of entry

A person exercising a right of entry under this Division—

- (a) must do so in a reasonable manner; and
- (b) must not stay in the room longer than is necessary to achieve the purpose of the entry without the resident's consent.

139 What must be in a notice of entry?

A notice requiring entry must—

- (a) be in writing; and
- (b) state why the rooming house owner or the rooming house owner's agent wishes to enter; and
- (c) be given—
 - (i) by post; or
 - (ii) by delivering it personally to the resident between the hours of 8 a.m. and 6 p.m.

140 Resident has duty to permit entry

A resident of a rooming house has a duty to permit a person exercising a right of entry in accordance with this Division to enter the room.

141 What if damage is caused during entry?

- (1) A resident of a rooming house may apply to the Tribunal for an order for compensation if the rooming house owner or the rooming house owner's agent causes damage to the resident's goods in the room when exercising a right of entry under section 136.
- (2) If an application is made under subsection (1), the Tribunal—
 - (a) may make an order for payment of any compensation that it thinks fit if it is satisfied that damage was caused to the resident's goods in the room; or
 - (b) may refuse to make an order.

142 What if a person exercising right of entry fails to comply with Division?

- (1) If the rooming house owner or the rooming house owner's agent has exercised a right of entry and in doing so fails to comply with this Division, the resident may apply to the Tribunal for an order restraining the rooming house owner and the rooming house owner's agent from exercising a right of entry under section 136 for a specified period.
- (2) If an application is made under subsection (1), the Tribunal—
 - (a) may make an order prohibiting the rooming house owner or the rooming house owner's agent from exercising a right of entry under section 136 (except for a purpose set out in section 137(c) or (d)) during the period

specified in the order if it is satisfied that it is reasonable to do so; or

(b) may refuse to make an order.

142A Offence relating to entering room occupied by resident

A rooming house owner or a rooming house owner's agent must not, without reasonable excuse, enter a room occupied by a resident otherwise than in accordance with this Division.

Penalty: 20 penalty units.

S. 142A
inserted by
No. 45/2002
s. 39,
amended by
No. 67/2010
s. 118.

Division 8—Standards

Pt 3 Div. 8
(Heading and
ss 142B,
142C)
inserted by
No. 67/2010
s. 76.

142B Standards for rooming houses etc.

S. 142B
inserted by
No. 67/2010
s. 76.

- (1) A rooming house owner must not provide to a resident of a rooming house a room that does not comply with the prescribed privacy, safety, security and amenity standards.

Penalty: 60 penalty units in the case of a natural person;

300 penalty units in the case of a body corporate.

- (2) A rooming house owner must not provide to a resident of a rooming house a facility or service that does not comply with the prescribed privacy, safety, security and amenity standards.

Penalty: 60 penalty units in the case of a natural person;

300 penalty units in the case of a body corporate.

- (3) A rooming house owner must not provide a resident of a rooming house with access to a common area that does not comply with the prescribed privacy, safety, security and amenity standards.

Penalty: 60 penalty units in the case of a natural person;
300 penalty units in the case of a body corporate.

S. 142BA
inserted by
No. 12/2015
s. 10.

142BA Records of gas and electrical safety checks

A rooming house owner must comply with any prescribed requirements for the keeping and production of records of gas and electrical safety checks conducted at the rooming house.

Penalty: 30 penalty units in the case of a natural person;
60 penalty units in the case of a body corporate.

S. 142C
inserted by
No. 67/2010
s. 76.

142C Regulations for rooming houses

- (1) The Governor in Council may make regulations for or with respect to—
- (a) for the purposes of this Division, prescribing privacy, safety, security and amenity standards in relation to all or any combination of the following—
 - (i) rooming houses;
 - (ii) rooms in a rooming house;
 - (iii) rooming house facilities and services;
 - (iv) common areas of rooming houses;
 - (v) the general amenity of rooming houses; and

(b) generally prescribing any matter or thing required or authorised to be prescribed by this Division.

(2) Regulations under this Division may—

- (a) be of general or limited application;
- (b) differ according to differences in time, place or circumstance;
- (c) apply at all times or specified times;
- (d) require matters in the regulations to be—
 - (i) in accordance with specified standards or specified requirements; or
 - (ii) approved by, or to the satisfaction of, a specified person or body or specified classes of person or body; or
 - (iii) as specified in both subparagraphs (i) and (ii);
- (e) apply, adopt or incorporate any matter contained in any document or any method, whether—
 - (i) wholly or partially or as amended by the regulations; or
 - (ii) as formulated or published on or before the date when the regulations are made; or
 - (iii) as formulated or published from time to time;
- (f) confer a discretionary authority or impose a duty on a specified person or body or specified classes of person or body;
- (g) provide for the exemption of a person or thing or classes of person or thing from any of the regulations, whether—

S. 142C(2)(h)
amended by
No. 56/2012
s. 5.

- (i) unconditionally or on specified conditions; and
- (ii) either wholly or to such an extent as is specified;
- (h) leave any matter or thing to be from time to time determined or approved by the Minister, the Director or the Director of Housing.

Pt 3 Div. 9
(Heading and
s. 142D)
inserted by
No. 67/2010
s. 77,
substituted by
No. 56/2012
s. 15.

Division 9—Rooming House Register

S. 142D
inserted by
No. 67/2010
s. 77,
amended by
No. 56/2012
s. 16.

142D Unregistered rooming house

An owner of a building who is not a rooming house owner, or that owner's agent, who has reason to believe that the building is being used as a rooming house but is not a registered rooming house must notify the Council of the district in which the building is located.

Penalty: 20 penalty units.

Note

Section 67 of the **Public Health and Wellbeing Act 2008** provides that it is an offence for the proprietor of prescribed accommodation within the meaning of that Act not to register that accommodation with the Council.

S. 142E
inserted by
No. 56/2012
s. 17.

142E Establishment of Rooming House Register

- (1) The Director must establish and maintain a register of rooming houses, to be known as the Rooming House Register.
- (2) The purpose of the Rooming House Register is to provide a consolidated State-wide register of information held by Councils about rooming houses—

- (a) to assist the Director to monitor compliance with this Act and the regulations; and
- (b) to assist Councils to monitor compliance with Part 6 of the **Public Health and Wellbeing Act 2008** and regulations made under that Act to the extent that that Part and those regulations apply to rooming houses; and
- (c) to promote compliance with section 142D; and
- (d) to enable research into, and evaluation of, the State's rooming house sector; and
- (e) to assist the public to identify registered rooming houses and the proprietors of registered rooming houses.

142F Information to be included in Rooming House Register

S. 142F
inserted by
No. 56/2012
s. 17.

- (1) The Rooming House Register is to contain the following information in respect of each registered rooming house—
 - (a) the particulars prescribed under the **Public Health and Wellbeing Act 2008** for the purposes of section 71(c) of that Act in relation to the registration of rooming houses;
 - (b) the information required under section 71(ca) of the **Public Health and Wellbeing Act 2008**;
 - (c) the conditions (if any) imposed under section 73(2) of the **Public Health and Wellbeing Act 2008** to which a registration is subject;
 - (d) the date of expiry of the registration;

- (e) if applicable, the date of, and grounds for, the cancellation, suspension, transfer or variation of registration of the rooming house under section 76 of the **Public Health and Wellbeing Act 2008**;
 - (f) the contact details of the owner of the rooming house premises;
 - (g) the contact details of the proprietor of the rooming house;
 - (h) any other prescribed particulars.
- (2) The Rooming House Register is to contain the following information in respect of each rooming house for which registration has been cancelled or refused to be renewed—
- (a) the information referred to in subsection (1)(a) and (b);
 - (b) the date of expiry of the registration before it was cancelled or renewal of that registration was refused;
 - (c) the date of, and grounds for, the cancellation or refusal to renew registration of the rooming house under section 76 of the **Public Health and Wellbeing Act 2008**.
- (3) The Rooming House Register may contain the following information in respect of each rooming house for which an application for registration has been refused to be issued—
- (a) the date of the application for registration;
 - (b) the address of the rooming house;
 - (c) the reasons for the refusal of registration;
 - (d) if the applicant is a body corporate, its name and ABN or ACN;

- (e) if the applicant is an individual, the applicant's name and ABN or date of birth.
- (4) The Director may record information in the Rooming House Register about an exemption granted by the Director to a rooming house owner from a rooming house standard.

142G Compilation of information for inclusion in Rooming House Register

S. 142G
inserted by
No. 56/2012
s. 17.

- (1) In accordance with subsections (3) and (4), a Council must enter in the Rooming House Register the information required under section 142F(1) or (2) for—
 - (a) each registered rooming house located in the Council's municipal district; and
 - (b) each rooming house located in the Council's municipal district for which registration has been cancelled or refused to be renewed.
- (2) A Council may enter in the Rooming House Register the information specified in section 142F(3) for each rooming house located in the Council's municipal district for which an application for registration has been refused to be issued.
- (3) The information required to be entered under subsection (1) must be entered at the time the Council issues, renews, transfers, varies, cancels, refuses to renew or suspends registration of a rooming house in accordance with Division 4 of Part 6 of the **Public Health and Wellbeing Act 2008**.
- (4) Despite subsection (3), information relating to a rooming house that is a registered rooming house on the date of commencement of this section must be entered in the Rooming House Register within 2 months from that date.

S. 142H
inserted by
No. 56/2012
s. 17.

142H Form of Rooming House Register

- (1) The Rooming House Register may be kept in any form the Director considers appropriate.
- (2) The Director may publish the Rooming House Register, or any details in the Rooming House Register, in any manner or form that the Director considers appropriate.

S. 142I
inserted by
No. 56/2012
s. 17.

142I Rooming House Register—Access and amendment

- (1) The Director has access to the Rooming House Register and must allow a Council to have access to the Rooming House Register.
- (2) A Council may amend or revoke an entry in the Rooming House Register relating to a rooming house located in the Council's municipal district if the Council considers the amendment or revocation is necessary in order to maintain the accuracy of the information contained in the entry.
- (3) The Director may amend information relating to a rooming house recorded by the Director under section 142F(4) if the Director considers the amendment is necessary in order to maintain the accuracy of the information.

S. 142J
inserted by
No. 56/2012
s. 17.

142J Inspection of Rooming House Register

- (1) The Director must allow any of the following persons to inspect the Rooming House Register for the purposes of carrying out that person's functions or duties—
 - (a) the Secretary to the Department of Justice;
 - (b) the Secretary to the Department of Human Services;
 - (c) the Secretary to the Department of Health;

- (d) a person employed under Part 3 of the **Public Administration Act 2004** in the Department of Justice, the Department of Human Services or the Department of Health.
- (2) Subject to subsection (3), the Director may permit a member of the public to inspect, free of charge, the following information in the Rooming House Register about each registered rooming house—
 - (a) the address of the registered rooming house;
 - (b) if the proprietor of the registered rooming house is a body corporate, its name and its ABN or ACN;
 - (c) if the proprietor of the registered rooming house is an individual, the person's name and, if applicable, the person's ABN;
 - (d) any other prescribed information.
- (3) A member of the public is not entitled to inspect the following information—
 - (a) information that has been restricted from public access under section 142K or 142KA;
 - (b) information referred to in section 142F(3).

S. 142J(3)(a)
amended by
No. 45/2018
s. 123.

142K Restriction on access to personal information

S. 142K
inserted by
No. 56/2012
s. 17.

- (1) This section applies to personal information in the Rooming House Register that the Director may make available for inspection under section 142J(2).
- (2) An individual who is an applicant for the issue, renewal or transfer of a registration of a rooming house under section 71 of the **Public Health and Wellbeing Act 2008** or the proprietor of a registered rooming house may apply to the Director to restrict public access to some or all of

that individual's personal information to which this section applies.

Example

An individual may wish his or her name to be restricted from access by the public.

- (3) On receiving an application under subsection (2), the Director may restrict public access to some or all of that personal information if the Director is satisfied that exceptional circumstances exist justifying the restriction of public access to that personal information.
- (4) The Director may restrict public access under subsection (3) for the period, and on the conditions, that the Director thinks fit.
- (5) If the Director is satisfied that it is in the public interest that restricted personal information be released to a person who applies for the release of that information, the Director may release some or all of the information to that person on any conditions that the Director thinks fit.
- (6) If the Director decides to release restricted personal information under subsection (5), the Director must give written notice of that decision to the individual whose restricted personal information is to be released.
- (7) The Director must not release restricted personal information without the consent of the individual whose personal information is restricted unless—
 - (a) at least 28 days have passed since the Director gave written notice under subsection (6) of the decision to release the information; and
 - (b) either—
 - (i) the individual has not applied to the Tribunal for a review of the decision; or

- (ii) the Tribunal has upheld the Director's decision to release the restricted information.

- (8) In this section—

personal information has the same meaning as in section 3 of the **Privacy and Data Protection Act 2014**.

S. 142K(8)
def. of
*personal
information*
amended by
No. 60/2014
s. 140(Sch. 3
item 41).

142KA Restriction on access to address of rooming house

S. 142KA
inserted by
No. 45/2018
s. 124.

- (1) An applicant for the issue, renewal or transfer of a registration of a rooming house under section 71 of the **Public Health and Wellbeing Act 2008** or the proprietor of a registered rooming house may apply to the Director to restrict public access to information under this Division concerning the address of the rooming house.
- (2) On an application under subsection (1), the Director may restrict public access to some or all of that information if the Director is satisfied that exceptional circumstances exist justifying the restriction of public access to that information.
- (3) The Director may restrict public access under subsection (2) for the period, and on the conditions, that the Director thinks fit.
- (4) In making a decision under this section, the Director must have regard to the purpose for which the Rooming House Register was established.
- (5) If the Director is satisfied that it is in the public interest that information restricted under this section be released to a person who applies for the release of that information, the Director may release some or all of the information to that

person on any conditions that the Director thinks fit.

- (6) If the Director decides to release restricted information under subsection (5), the Director must give written notice of that decision to the applicant.
- (7) The Director must not release information restricted under this section without the consent of the applicant unless—
 - (a) at least 28 days have passed since the Director gave written notice under subsection (6) of the decision to release the information; and
 - (b) either—
 - (i) the applicant has not applied to the Tribunal for a review of the decision; or
 - (ii) the Tribunal has upheld the Director's decision to release the restricted information.

S. 142L
inserted by
No. 56/2012
s. 17.

142L Rights of review

- (1) A person whose interests are affected by a decision of the Director under section 142K may apply to the Tribunal for a review of that decision.
- (2) An application for review under subsection (1) must be lodged with the Tribunal within 28 days after the later of—
 - (a) notice of the decision was given; or
 - (b) if, under section 45 of the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

Part 4—Caravan parks and movable dwellings—Residency rights and duties

Division 1AA—Application of Part

Pt 4 Div. 1AA
(Heading and
s. 143AA)
inserted by
No. 67/2010
s. 9.

143AA Application of Part to caravan parks and movable dwellings

- (1) This Part applies to a person who is—
- (a) a resident of a caravan park who has a right to reside on a caravan park site and a right to reside in a caravan situated on that site; and
 - (b) a resident of a caravan park who has a right to reside on a caravan park site and who owns a caravan that is situated on that site, unless that caravan is a Part 4A dwelling; and
 - (c) a person who resides in a Part 4A dwelling on a Part 4A site (other than under a site agreement) and who does not own that Part 4A dwelling in whole or in part.
- (2) This Part does not apply to site agreements.

S. 143AA
inserted by
No. 67/2010
s. 9.

Division 1—Residency rights

143 Residency right

Subject to this Act, a resident has—

- (a) a right to reside on the site which he or she occupies; and
- (b) a right to occupy the caravan on that site.

144 Agreements

- (1) A resident and a caravan park owner may enter an agreement specifying the terms and conditions of the resident's use and enjoyment of the caravan park.
- (2) A resident and a caravan owner may enter an agreement specifying the terms and conditions of the resident's use and enjoyment of the caravan.
- (3) A caravan park owner and a caravan owner may enter an agreement specifying the terms and conditions of the occupancy of a site by a caravan.
- (4) A term or condition in an agreement under this section that is inconsistent with this Act or that purports to exclude, restrict or modify the application of or exercise of a right conferred by this Act is invalid.
- (5) In this section *resident* includes a proposed resident.

S. 144A
inserted by
No. 45/2002
s. 44.

144A Harsh and unconscionable terms

- (1) A resident may apply to the Tribunal for an order declaring invalid or varying a term of an agreement referred to in section 144(1) or (2).
- (2) A caravan owner may apply to the Tribunal for an order declaring invalid or varying a term of an agreement referred to in section 144(3).
- (3) On an application under subsection (1) or (2), the Tribunal, by order, may declare invalid or vary a term of the agreement if it is satisfied that the term is harsh or unconscionable or is such that a court exercising its equitable jurisdiction would grant relief.
- (4) An order under this section has effect according to its terms.

145 Caravan park owner to notify prospective resident of rights

S. 145
amended by
No. 67/2010
s. 119.

A caravan park owner must give notice in the prescribed form to a person who proposes to occupy a site in the caravan park as his or her main residence that—

- (a) he or she may enter into a written agreement with the caravan park owner to become a resident of the caravan park at any time; and
- (b) even if an agreement referred to in paragraph (a) is not entered into, the person becomes a resident of the caravan park if the person occupies, for at least 60 consecutive days, any site in the caravan park as his or her only or main residence.

S. 145(b)
amended by
No. 63/2005
s. 22.

Penalty: 10 penalty units.

Division 2—Bonds

146 Payment of bond

- (1) A caravan park owner may require a resident or proposed resident to pay a bond before the resident or proposed resident commences occupation as a resident of a caravan or site.
- (2) A caravan owner may require a resident or proposed resident to pay a bond before the resident or proposed resident commences occupation as a resident of a caravan.
- (3) A caravan park owner must not require a person to pay a bond unless the caravan park owner has entered into a written agreement with the person to become a resident of the caravan park.

S. 146(1)
amended by
No. 45/2002
s. 45.

S. 146(2)
amended by
No. 45/2002
s. 45.

S. 146(3)
amended by
No. 67/2010
s. 120.

Penalty: 20 penalty units.

S. 147
amended by
No. 67/2010
s. 121.

147 What is the maximum bond?

A caravan park owner or caravan owner must not demand or receive a bond which exceeds the equivalent of the rent or hiring charge payable for a period of 28 days.

Penalty: 20 penalty units.

148 Condition report

S. 148(1)
amended by
Nos 45/2002
s. 46(1),
67/2010 s. 122.

- (1) If a resident or proposed resident pays a bond, the caravan park owner or caravan owner must, before the resident or proposed resident commences occupation as a resident, give the resident or proposed resident 2 copies of a condition report signed by or on behalf of the caravan park owner or caravan owner specifying the state of repair and general condition of the caravan on the day specified in the report.

Penalty: 10 penalty units.

S. 148(2)
amended by
No. 45/2002
s. 46(2).

- (2) Within 3 business days after commencing occupation as a resident, the resident must return one copy of the condition report to the caravan park owner or caravan owner—
 - (a) signed by or on behalf of the resident; or
 - (b) with an endorsement so signed to the effect that the resident agrees or disagrees with the whole or any specified part of the report.

149 Condition report is evidence of state of repair

- (1) A statement in a condition report under section 148 is conclusive evidence, for the purposes of this Act, of the state of repair or general condition of the caravan on the day specified in the report if the report is signed by or on behalf of—

- (a) the caravan park owner or the caravan owner; and
 - (b) the resident.
- (2) Subsection (1) does not apply to—
- (a) a state of repair or general condition that could not reasonably have been discovered on a reasonable inspection of the caravan; or
 - (b) a statement with which the resident disagrees under an endorsement on the report.

Division 3—Rents and hiring charges

150 Limit on rent or hiring charge in advance

- (1) A caravan park owner must not require a resident to pay rent more than 14 days in advance.
Penalty: 20 penalty units.
S. 150(1)
amended by
No. 67/2010
s. 123.
- (2) A caravan owner must not require a resident to pay a hiring charge more than 28 days in advance.
Penalty: 20 penalty units.
S. 150(2)
amended by
No. 67/2010
s. 123.

151 Receipts for rent or hiring charge

- (1) A person who receives a payment of rent or a payment of a hiring charge from a resident must give a written receipt in accordance with this section to the person making the payment—
 - (a) immediately, if the payment is made in person; or
 - (b) if the payment is not made in person and a receipt is requested at the time of making the payment, within 5 business days of receiving the payment.
Penalty: 10 penalty units.
S. 151(1)
amended by
No. 67/2010
s. 124.

S. 151(2)
substituted by
No. 45/2002
s. 47,
amended by
No. 67/2010
s. 124.

- (2) If a person receives a payment of rent or a payment of a hiring charge from a resident and a written receipt is not required to be given under subsection (1), the person must keep a record of the payment of rent or the payment of a hiring charge until the earlier of—
- (a) the end of 12 months after receiving the payment; or
 - (b) if a resident requests a copy of the record before the end of 12 months after making the payment, the provision of a copy of the record to the resident.

Penalty: 10 penalty units.

S. 151(2A)
inserted by
No. 45/2002
s. 47,
amended by
No. 67/2010
s. 124.

- (2A) If a resident requests a copy of a record under subsection (2)(b) before the end of 12 months after making the payment of rent or the payment of a hiring charge, a person who keeps a record under subsection (2) must provide a copy of that record to the resident within 5 business days after receiving the request.

Penalty: 10 penalty units.

S. 151(2B)
inserted by
No. 45/2002
s. 47.

- (2B) For the purposes of subsection (2), a record must contain information which enables the details specified in paragraphs (a) to (e) of subsection (3) to be identified.
- (3) A receipt under this section must be signed by the person who receives the payment and must state—
- (a) the name of the resident and the caravan park; and
 - (b) the date of receipt; and
 - (c) the period for which payment is made; and
 - (d) the amount paid; and
 - (e) the fact that the payment is for rent or a hiring charge.

- (4) The regulations may provide that a prescribed person is exempt from subsection (1), (2) or (3) subject to the conditions, if any, specified in the regulations.

152 How much notice is required of rent or hiring charge increase?

- | | |
|---|--|
| (1) A caravan park owner must give a resident at least 60 days notice in the prescribed form of a proposed rent increase. | S. 152(1)
amended by
No. 45/2002
s. 48(1)(a). |
| (2) A caravan owner must give a resident at least 60 days notice in the prescribed form of a proposed hiring charge increase. | S. 152(2)
amended by
No. 45/2002
s. 48(1)(b). |
| (3) A notice of a proposed rent increase under subsection (1) or a proposed hiring charge increase under subsection (2) may only provide for one rent increase or hiring charge increase. | |
| (4) If the caravan park owner is also the caravan owner or the agent of the caravan owner, the notice must specify the rent increase and hiring charge increase separately. | |
| (5) The notice of a proposed rent increase or hiring charge increase must include a statement informing the resident of the resident's right under section 153 to apply within 30 days after the notice is given to the Director to investigate and report on the proposed rent or hiring charge. | S. 152(5)
amended by
No. 45/2002
s. 48(1)(c). |
| (5A) A caravan park owner must not increase the rent payable by a resident at intervals of less than 6 months. | S. 152(5A)
inserted by
No. 45/2002
s. 48(2). |
| (5B) A caravan owner must not increase the hiring charge payable by a resident at intervals of less than 6 months. | S. 152(5B)
inserted by
No. 45/2002
s. 48(2). |
| (6) A rent increase or hiring charge increase in contravention of this section is invalid. | |

153 Resident may complain to Director about excessive rent or hiring charge

- (1) A resident of a caravan park may apply to the Director to investigate and report if the resident has received a notice of a rent increase or hiring charge increase and the resident considers that the proposed rent or hiring charge is excessive.
- (2) An application under subsection (1) must be made in writing within 30 days after the notice of the rent or hiring charge increase is given.
- (3) As soon as practicable after receiving an application, the Director must—
 - (a) carry out an investigation; and
 - (b) give a written report to the resident and a copy of the report to the caravan park owner or caravan owner.
- (4) The report of the Director must—
 - (a) include a statement informing the resident of the resident's right under section 154 to apply to the Tribunal for an order in respect of the proposed rent or hiring charge; and
 - (b) take into account the matters referred to in section 155(3).

154 Application to Tribunal about excessive rent or hiring charge

- (1) After receiving a report from the Director under section 153, the resident may apply to the Tribunal for an order declaring the proposed rent or hiring charge excessive.
- (2) An application under subsection (1) must—
 - (a) be made within 30 days after the resident receives the Director's report;

S. 154(2)(a)
amended by
No. 52/1998
s. 236(g)(i).

* * * * *

**S. 154(2)(b)
repealed by
No. 52/1998
s. 236(g)(ii).**

155 What can the Tribunal order?

- (1) If an application is made under section 154, the Tribunal may—
 - (a) make an order—
 - (i) declaring the proposed rent or hiring charge excessive; and
 - (ii) directing that for the period specified in the order the rent or hiring charge must not exceed the amount specified in the order; or
 - (b) dismiss the application.
- (2) The Tribunal must have regard to the Director's report obtained under section 153 in determining the application.
- (3) The Tribunal must make an order declaring the proposed rent excessive if it is satisfied that the proposed rent is more than that which should reasonably be paid by a resident having regard to—
 - (a) the rent payable for a similar site in the caravan park;
 - (b) the rent payable for a similar site in a similar caravan park in a similar location;
 - (c) the state of repair and general condition of the site and the caravan park;
 - (d) any variation in the cost of providing facilities or services that the caravan park owner provides;

S. 155(3)(ea)
inserted by
No. 45/2002
s. 49(1).

(e) any changes in the rent and the condition of the site or facilities in the caravan park since the resident first occupied the site and since the last rent increase;

(ea) the number of rent increases (if any) in the preceding 24 months, the amount of each rent increase in that period and the timing of those increases;

(f) any improvements made to the site which should not result in an increase because they were made by the resident.

(4) The Tribunal must make an order declaring a proposed hiring charge excessive if it is satisfied that the proposed hiring charge is more than that which should reasonably be paid by a resident having regard to—

(a) the hiring charges payable by a resident for a similar caravan;

S. 155(4)(ab)
inserted by
No. 45/2002
s. 49(2).

(ab) the number of hiring charge increases (if any) in the preceding 24 months, the amount of each hiring charge increase in that period and the timing of those increases;

(b) the state of repair and general condition of the caravan.

(5) If the Tribunal makes an order under subsection (1)(a), a caravan park owner or caravan owner cannot require a resident to pay an amount of rent or hiring charge greater than that specified in the order for a period of 6 months after the day on which the order comes into operation.

(6) The amount specified in the order must not be less than the amount payable by the resident immediately before the notice was given under section 152.

156 Payment of increased rent or hiring charge pending Tribunal decision

- (1) Pending the Tribunal's decision under section 155, the resident must pay, from the time the proposed increase is to apply—
 - (a) the increased rent or hiring charge specified in the notice under section 152; or
 - (b) 110% of the rent or hiring charge immediately before the notice was given—whichever is less.
- (2) If the Tribunal makes an order under section 155, it may also order that any excess rent or hiring charge paid by the resident from the time the increase took effect until the date of the order be refunded by the caravan park owner or the caravan owner.
- (3) The order may specify the procedure for the refund to the resident.

157 Additional rent

- (1) A caravan park owner may charge a resident a reasonable additional rent for any visitor who stays in the caravan owned by the resident or hired by the resident from a caravan owner.
- (2) A resident may apply to the Tribunal for an order that the additional rent is unreasonable.
- (3) If, after hearing the resident and the caravan park owner, the Tribunal determines that the amount of the additional rent is unreasonable, it may determine in the order the amount of additional rent to be paid by the resident.

158 Additional hiring charge

- (1) A caravan owner may charge a resident a reasonable additional hiring charge for any visitor who stays in a caravan hired by the resident from the caravan owner.
- (2) A resident may apply to the Tribunal for an order that the additional hiring charge is unreasonable.
- (3) If, after hearing the resident and the caravan owner, the Tribunal determines that the amount of the additional hiring charge is unreasonable, it may determine in the order the amount of additional hiring charge to be paid by the resident.

S. 159
amended by
No. 45/2002
s. 50 (ILA
s. 39B(1)).

159 Rent must be reduced if services are reduced

- (1) If a caravan park owner ceases providing services to a resident, the caravan park owner must reduce the rent by—
 - (a) the amount agreed between them; or
 - (b) an amount determined by the Tribunal in the absence of any agreement on an application by either party.
- (2) If the Tribunal determines an amount under subsection (1)(b), it may also order that—
 - (a) the reduction in rent is to take effect from the time the caravan park owner ceased to provide services to the resident; and
 - (b) the caravan park owner is to refund to the resident any excess rent paid by the resident from the time the caravan park owner ceased to provide services until the date of the order.

S. 159(2)
inserted by
No. 45/2002
s. 50.

160 Resident's goods not to be taken for rent or hiring charges

S. 160
amended by
No. 67/2010
s. 125.

A person must not take or dispose of a resident's goods on account of rent or hiring charges owing by the resident.

Penalty: 20 penalty units.

Division 4—Other charges

161 Fee for supply of key

A caravan park owner may charge a reasonable initial fee for the supply of a key or device enabling a resident to gain vehicular access to the caravan park.

162 Resident's liability for electricity, gas and water charges

- (1) A resident is liable for all charges made for the supply or use of electricity, gas, water, drainage and sewerage to a site while the resident occupies the site, if those services are separately metered.
- (2) A resident is liable for all charges in respect of the supply or use of bottled gas at a site while the resident occupies the site.

163 Caravan park owner's liability for electricity, gas and water charges

A caravan park owner is liable for—

- (a) the installation costs and charges in respect of the initial connection to a site of any electricity, water or gas (including bottled gas) supply service;
- (b) the cost of all services to a site if those services are not separately metered;

- (c) all charges arising from a water supply service to a separately metered site that are not based on the amount of water supplied or used;
- (d) all charges related to the supply or use of sewerage and drainage services to or at a separately metered site that are not based on the extent of use of the services.

164 Owner's responsibility for charges for supply to non-complying appliances

- (1) A caravan owner is liable for the cost of water supplied to or used in the caravan for as long as the owner is in breach of section 181 or any law requiring the use of water efficient appliances for the caravan.
- (2) Subsection (1) applies despite anything to the contrary in section 162 of this Act and Part 13 of the **Water Act 1989**.

S. 164(2)
amended by
No. 85/2006
s. 173(Sch. 1
item 9).

165 Reimbursement

- (1) If a caravan park owner pays for anything for which a resident is liable under section 162, the resident must reimburse the owner within 28 days after receiving a written request for reimbursement attached to a copy of the account and the receipt or other evidence of payment.
- (2) If a resident pays for anything for which the caravan park owner or caravan owner is liable under section 163 or 164, the owner must reimburse the resident within 28 days after receiving a written request for reimbursement attached to a copy of the account and the receipt or other evidence of payment.

- (3) Subsection (1) does not apply if the caravan park owner directly bills the resident under a re-sale agreement with a supply authority.

166 Owner must not seek overpayment for utility charges

- (1) A caravan park owner must not seek payment or reimbursement for a cost or charge under section 165 that is more than the amount that the relevant supplier of the utility would have charged the resident.

S. 166(1)
amended by
Nos 45/2002
s. 51, 67/2010
s. 126.

Penalty: 20 penalty units.

- (2) If the relevant supplier of the utility has issued an account to the caravan park owner, a caravan park owner cannot recover from the resident an amount which includes any amount that could have been claimed as a concession or rebate by or on behalf of the resident from the relevant supplier of the utility.

S. 166(2)
amended by
No. 45/2002
s. 51.

- (3) Subsection (2) does not apply if the concession or rebate—

- (a) must be claimed by the resident and the caravan park owner has given the resident the opportunity to claim it and the resident does not do so by the payment date set by the relevant supplier of the utility; or

S. 166(3)(a)
amended by
No. 45/2002
s. 51.

- (b) is paid directly to the resident as a refund.

Division 5—General duties of residents, caravan park owners and caravan owners

167 Resident's use of site

- (1) A resident must use the site for residential purposes only.

- (2) A resident must use the site, caravan park and facilities properly and ensure that his or her visitors do the same.

168 Resident must not use site for illegal purposes

A resident must not use the site or permit its use for any purpose that is illegal at common law or under an Act.

169 Resident's duty to pay rent and hiring charge

A resident must—

- (a) pay the rent and other charges agreed with the caravan park owner on the due dates and in the agreed manner; and
- (b) pay the hiring charges to the caravan owner on the due dates and in the agreed manner.

170 Quiet enjoyment—resident's duty

A resident must not do anything in or near the site or caravan park or allow his or her visitors to the caravan park or site to do anything which interferes with the privacy and peace and quiet of other occupants of the caravan park or their proper use and enjoyment of the caravan park.

171 Resident must keep site clean

- (1) A resident must keep the site clean and tidy.
- (2) A resident must maintain the site and caravan in a manner and condition that do not detract from the general standard of the caravan park as set by the caravan park owner from time to time.

172 Resident must not erect structures

A resident must not erect any structure on the site or in the caravan park without the prior written consent of the caravan park owner.

173 Resident must notify owner of and compensate for damage

- (1) If any damage other than fair wear and tear is caused to the caravan or any facility in the caravan park by the resident or his or her visitors, the resident must—
 - (a) repair the damage; or
 - (b) notify the caravan owner or caravan park owner of the damage and pay compensation for the damage to the caravan owner or the caravan park owner.
- (2) A resident must report to the caravan park owner any damage to or breakdown of communal facilities of which the resident has knowledge.

174 Number of persons residing on site

A resident must not allow more than the number of persons agreed with the caravan park owner to reside on the site.

175 Resident must observe caravan park rules

A resident must observe all caravan park rules made from time to time in accordance with this Act.

176 Caravan park owner must provide access

A caravan park owner must—

- (a) provide 24 hours vehicular access for all residents to all sites; and
- (b) provide 24 hour access for all residents to the caravan park and the communal toilet and bathroom facilities; and
- (c) provide access during all reasonable hours for residents to recreational areas, laundry and communal facilities other than toilets and bathrooms.

177 Quiet enjoyment—caravan park owner's duty

A caravan park owner must not unreasonably restrict or interfere with a resident's privacy, peace and quiet or proper use and enjoyment of the site and the communal facilities.

178 Caravan park owner must keep park etc. clean

A caravan park owner must—

- (a) keep common areas, gardens, roadways, paths and recreation areas in the caravan park clean and in a safe condition; and
- (b) arrange for the collection of residents' garbage and other garbage from the caravan park.

179 Duty of caravan park owner to maintain communal areas

- (1) A caravan park owner must maintain, repair and keep clean and tidy all communal bathrooms, toilets, laundries and other communal facilities in the caravan park.
- (2) When repairing or renovating communal facilities, a caravan park owner must—
 - (a) minimise inconvenience and disruption to residents; and
 - (b) if necessary, provide temporary substitute facilities.

180 Maintenance and repair of caravans

- (1) A caravan park owner must maintain in good repair a caravan hired on site to a resident.
- (2) A caravan owner who is not also the caravan park owner must maintain in good repair a caravan hired to a resident.

181 Owner must ensure water efficient appliances installed

S. 181
amended by
No. 32/2010
s. 79(4).

A caravan owner must ensure that, if an appliance, fitting or fixture provided by the caravan owner that uses or supplies water in a caravan hired to the resident or on the site occupied by the resident needs to be replaced, the replacement has at least a prescribed level of rating in a prescribed rating system.

182 Statement of rights and copy of park rules

S. 182
amended by
No. 67/2010
s. 127.

Not later than the day on which a resident enters into occupation of a site in a caravan park, the caravan park owner must give the resident—

- (a) a written statement in a form approved by the Director setting out in summary form the resident's rights and duties under this Act; and
- (b) a copy of the caravan park rules.

Penalty: 20 penalty units.

183 Statement of scale of certain charges, fees and commissions

S. 183(1)
amended by
No. 67/2010
s. 128(1).

- (1) Not later than the day on which a resident enters into occupation of a site in the caravan park, a caravan park owner must give the resident a statement setting out—
 - (a) the scale of additional rent for visitors set by the caravan park owner payable by a resident; and
 - (b) the scale of additional hiring charges for visitors set by the caravan owner payable by a resident; and

(c) the fees, if any, which the caravan park owner may charge for storage or removal of a caravan; and

(d) the scale of commission which applies to the sale of a caravan by a caravan park owner.

Penalty: 20 penalty units.

S. 183(2)
amended by
No. 67/2010
s. 128(2).

(2) A caravan park owner must give a resident at least 7 days written notice of any proposed change in any amount set out in subsection (1).

Penalty: 10 penalty units.

184 Owner to give additional information

S. 184(1)
amended by
No. 67/2010
s. 129.

(1) If there is no agent acting for the caravan park owner, a caravan park owner must, on or before the required day, give the resident—

(a) written notice of the caravan park owner's full name and address for the service of documents; and

(b) an emergency telephone number to be used in the case of the need for urgent repairs.

Penalty: 10 penalty units.

S. 184(2)
amended by
No. 67/2010
s. 129.

(2) If there is an agent acting for the caravan park owner, a caravan park owner must, on or before the required day, give the resident—

(a) written notice of the agent's full name and address for service of documents and the agent's telephone number; and

(b) a written statement setting out—

(i) whether or not the agent can authorise urgent repairs; and

(ii) if the agent can authorise urgent repairs, the maximum amount for repairs which the agent can authorise; and

- (iii) the agent's telephone number for urgent repairs.

Penalty: 10 penalty units.

- (3) A caravan park owner must give a resident notice in writing of any change in the information set out in subsection (1) or (2) before the end of 7 days after the change.

S. 184(3)
amended by
No. 67/2010
s. 129.

Penalty: 10 penalty units.

- (4) In this section *required day* means a day 7 days after a person becomes a resident of the caravan park.

185 Caravan park rules

- (1) A caravan park owner may from time to time make rules relating to the use, enjoyment, control and management of the caravan park.

- (2) Without limiting subsection (1), rules may be made in relation to—

- (a) the making and abatement of noise;
- (b) motor vehicle speed limits within the caravan park;
- (c) the parking of motor vehicles;
- (d) the disposal of refuse;
- (e) the keeping of pets;
- (f) the playing of games and other sports activities;
- (g) the use and operation of communal facilities.

186 Duties relating to caravan park rules

- (1) A caravan park owner must give the resident at least 7 days written notice of any proposed change in the caravan park rules.

S. 186(1)
amended by
No. 67/2010
s. 130.

Penalty: 10 penalty units.

(2) A caravan park owner must—

- (a) take all reasonable steps to ensure that the caravan park rules are observed by all residents; and
- (b) ensure that the caravan park rules are reasonable and are enforced and interpreted consistently and fairly.

187 What if the caravan park rules are thought to be unreasonable?

(1) A resident may apply to the Tribunal for an order declaring a caravan park rule to be unreasonable.

S. 187(2)
repealed by
No. 52/1998
s. 236(h).

* * * *

(3) If the Tribunal considers that a caravan park rule is unreasonable, it may declare the rule invalid.

(4) In making a declaration under subsection (3) the Tribunal must have regard to—

- (a) the location of the caravan park; and
- (b) the number and characteristics of the residents; and
- (c) the internal layout of the caravan park; and
- (d) the amenities, improvements, facilities and other physical features of the caravan park; and
- (e) the levels of rent and other charges paid by the residents.

Division 6—Repairs

188 Urgent repairs to caravans

- (1) A resident may arrange for urgent repairs to a caravan to be carried out if—
- (a) the resident has taken reasonable steps to arrange for the caravan park owner or the caravan park owner's agent or the caravan owner or the caravan owner's agent to immediately carry out the urgent repairs to the caravan; and
 - (b) the resident is unable to get the caravan park owner or the caravan owner or the owner's agent to carry out those repairs.
- (2) If the resident carries out repairs under subsection (1)—
- (a) the resident must give the caravan park owner or caravan owner 14 days written notice of the repairs carried out and the cost; and
 - (b) the caravan park owner or caravan owner is liable to reimburse the resident for the reasonable cost of the repairs or \$1000, or if a greater amount is prescribed for the purposes of this section, that prescribed amount, (which includes any amount in respect of any GST payable on the supply to which the urgent repairs relate), whichever is less.
- (3) If urgent repairs are required to an item that uses or supplies water and that item does not have at least a prescribed level of rating in a prescribed rating system, and that item cannot be repaired, the resident may replace it with an item that has a rating that is of or above a prescribed level of rating in a prescribed rating system.

S. 188(2)(b)
amended by
No. 67/2010
s. 169(1)

S. 188(3)
substituted by
No. 32/2010
s. 79(5).

- (4) This section does not apply—
- (a) to equipment or appliances supplied by the resident; or
 - (b) if there is no immediate danger to health and safety and the resident is able to use facilities in the communal areas of the caravan park; or
 - (c) if the caravan is owned by the resident.

189 Application to Tribunal for urgent repairs

- (1) A resident may apply to the Tribunal for an order requiring the caravan park owner or the caravan park owner's agent or the caravan owner or the caravan owner's agent to carry out specified urgent repairs if—
- (a) the resident cannot meet the cost of the repairs; or
 - (b) the repairs cost more than \$1000, or if a greater amount is prescribed for the purposes of this section, that prescribed amount, (which includes any amount in respect of any GST payable on the supply to which the urgent repairs relate); or
 - (c) the caravan park owner or caravan owner has refused to pay the cost of the urgent repairs.
- (2) The Tribunal must hear an application under subsection (1) within 2 business days after the application is made.

S. 189(1)(b)
amended by
No. 67/2010
s. 169(2).

190 Application to Director to investigate need for non-urgent repairs

- (1) A resident may apply to the Director to investigate whether the caravan park owner or caravan owner is in breach of a duty to ensure the caravan is maintained in good repair if—

- (a) the resident has given notice to the caravan park owner or caravan owner that repairs (other than urgent repairs) are required to the caravan; and
 - (b) the caravan park owner or caravan owner has not carried out the repairs within 14 days after being given the notice.
- (2) An application under subsection (1) must be in writing.
- (3) On an application under subsection (1), the Director—
 - (a) must investigate; and
 - (b) may negotiate arrangements for the carrying out of repairs if the Director is satisfied that the caravan park owner or caravan owner is in breach of the duty to maintain the caravan in good repair; and
 - (c) must give a written report to the resident.

191 Application to Tribunal for non-urgent repairs

- (1) A resident may apply to the Tribunal for an order requiring the caravan park owner or caravan owner to carry out specified repairs if—
 - (a) the resident has received the Director's report under section 190; and
 - (b) the resident is still of the view that satisfactory arrangements have not been made for the carrying out of the repairs.
- (2) An application under subsection (1) must be made within 60 days of receiving the Director's report under section 190.

S. 191(2)
repealed by
No. 52/1998
s. 236(i),
new s. 191(2)
inserted by
No. 45/2002
s. 52(1).

S. 191(3)
repealed by
No. 52/1998
s. 236(i).

* * * *

S. 191(4)
amended by
No. 45/2002
s. 52(2).

- (4) A resident may apply to the Tribunal for an order requiring the caravan park owner or caravan owner to carry out specified repairs without the Director's report under section 190 if the resident has not received that report within 90 days after the resident applied for that report.

192 What can the Tribunal order?

- (1) The Tribunal may make an order requiring the caravan park owner or caravan owner to carry out specified repairs if it is satisfied that the owner is in breach of the duty to maintain the caravan in good repair.
- (2) The order must specify the repairs and the time within which they must be carried out.

193 Payment of hiring charge into Rent Special Account

- (1) If a resident has given notice under section 190 requiring repairs to be carried out, the resident may apply to the Tribunal for an order authorising the payment of the hiring charge into the Rent Special Account.
- (2) The Tribunal may make an order authorising the resident to pay the hiring charge into the Rent Special Account for a period specified by the Tribunal if it is satisfied that—
- (a) a notice requiring the carrying out of repairs has been given to the caravan park owner or the caravan owner in accordance with this Act; and
- (b) the caravan park owner or caravan owner has failed to comply with the duty to carry out the repairs.

- (3) If an order is made under subsection (2)—
- (a) the amount of the hiring charge held in the Rent Special Account at the end of that period must be paid to the caravan park owner or caravan owner; and
 - (b) on application by the caravan park owner or caravan owner, the Tribunal may order that the whole or such part of the hiring charge as it may determine be paid to the caravan park owner or caravan owner before the end of that period, if it is satisfied that the owner has fulfilled or is fulfilling the owner's duty to carry out the repairs.

194 Repair provisions not applicable to certain damage

Sections 190 to 193 do not apply to damage caused by the misuse or the negligence of the resident or his or her visitor.

Division 7—Transfer of rights and sale of caravans and movable dwellings

195 Transfer of residency right

- (1) If a resident who occupies a site in a caravan owned by the resident sells the caravan, the resident, with the consent of the caravan park owner, may transfer his or her residency right to the purchaser of the caravan by a transfer in a form approved by the Minister.
- (2) A caravan park owner must not unreasonably withhold consent to a transfer under subsection (1).

- (3) A caravan park owner is deemed to have consented to a transfer under subsection (1) if—
 - (a) the resident—
 - (i) has given the caravan park owner a completed transfer form and the names in writing of any persons proposing to occupy the caravan with the proposed resident; and
 - (ii) has requested the caravan park owner to consent by signing the transfer; and
 - (b) the caravan park owner has not consented or refused to consent within 7 days of being given the completed transfer form.
- (4) A purchaser of a caravan who obtains a residency right on a site by transfer must occupy the caravan himself or herself.

196 What if the caravan park owner unreasonably withholds consent to transfer?

- (1) A resident may apply to the Tribunal for an order that the caravan park owner has unreasonably withheld consent to a transfer.
- (2) The Tribunal may—
 - (a) dismiss the application if it is satisfied that in all the circumstances the withholding of consent was reasonable; or
 - (b) make an order that the withholding of consent was unreasonable and the transfer may go ahead without the caravan park owner's consent.

197 Owner must not charge fee for transfer of resident's rights

A caravan park owner must not charge a fee as a condition of or in consideration of the caravan park owner consenting to a resident transferring his or her residency right.

198 Sale of caravan

- (1) A caravan park owner must not enter into an agreement to sell a caravan on behalf of a resident or former resident unless the caravan park owner has complied with section 183 in relation to the scale of commission charged for the sale.

S. 198(1)
amended by
No. 67/2010
s. 131(1).

Penalty: 10 penalty units.

- (2) A caravan park owner must not by act or omission obstruct or hinder the sale of a caravan owned by a resident.

S. 198(2)
amended by
No. 67/2010
s. 131(2).

Penalty: 60 penalty units in the case of a natural person;

300 penalty units in the case of a body corporate.

Division 8—Rights of entry

199 Entry of caravan by caravan park owner

A caravan park owner or a person appointed in writing as the caravan park owner's agent for the purpose has a right to enter a caravan or site occupied by a resident—

- (a) if the resident agrees at the time entry is sought; or
- (b) if there is an emergency and immediate entry is necessary to save life or valuable property; or
- (c) if the Tribunal has made an abandonment order under section 301; or

- (d) for a purpose set out in section 201, at any time between 8 a.m. and 6 p.m. on any day (except a public holiday) if at least 24 hours notice has been given to the resident in accordance with section 203.

200 Entry of caravan by caravan owner

A caravan owner or a person appointed in writing as the caravan owner's agent for the purpose has a right to enter a caravan occupied by a resident—

- (a) if the resident agrees at the time entry is sought; or
- (b) if the Tribunal has made an abandonment order under section 301; or
- (c) for a purpose set out in section 201, at any time between 8 a.m. and 6 p.m. on any day (except a public holiday) if at least 24 hours notice has been given to the resident in accordance with section 203.

201 Grounds for entry of caravan or site

A right of entry in respect of a caravan or site may be exercised if—

- (a) before giving notice of entry, a notice to vacate or a notice of intention to vacate the caravan or site has been given and entry is required to show the caravan or site to a prospective resident; or
- (b) the caravan is to be sold or used as security for a loan and entry is required to show the caravan to a prospective buyer or lender; or
- (c) entry is required to enable the caravan park owner or caravan owner to carry out a duty under this Act or any other Act; or

- (d) the caravan park owner or the caravan owner or the owner's agent has reasonable grounds to believe that the resident has failed to comply with his or her duties under this Act; or
- (e) entry is required to enable inspection—
 - (i) of the site; and
 - (ii) if the resident is not the caravan owner, of the caravan—and entry for that purpose has not been made within the last 6 months.

202 Manner of entry

A person exercising a right of entry under this Division—

- (a) must do so in a reasonable manner; and
- (b) must not stay in the caravan or on the site longer than is necessary to achieve the purpose of the entry without the resident's consent.

203 What must be in a notice of entry?

A notice requiring entry must—

- (a) be in writing; and
- (b) state why the caravan park owner, caravan owner or the owner's agent wishes to enter; and
- (c) be given—
 - (i) by post; or
 - (ii) by delivering it personally to the resident between the hours of 8 a.m. and 6 p.m.

204 Resident has duty to permit entry

A resident of a caravan park has a duty to permit a person exercising a right of entry in accordance with this Division to enter the caravan or site (as the case may be).

205 What if damage is caused during entry?

- (1) A resident of a caravan park may apply to the Tribunal for an order for compensation if the caravan park owner or the caravan owner or the owner's agent causes damage to the resident's goods in the caravan or on the site when exercising a right of entry under section 199 or 200.
- (2) If an application is made under subsection (1), the Tribunal—
 - (a) may make an order for payment of any compensation that it thinks fit if it is satisfied that damage was caused to the resident's goods in the caravan or on the site; or
 - (b) may refuse to make an order.

206 What if a person exercising right of entry fails to comply with Division?

- (1) If the caravan park owner or caravan owner or the owner's agent has exercised a right of entry and in doing so fails to comply with this Division, the resident may apply to the Tribunal for an order restraining the caravan park owner or caravan owner or the owner's agent from exercising a right of entry under section 199 or 200 for a specified period.

(2) If an application is made under subsection (1), the Tribunal—

(a) may make an order prohibiting the caravan park owner or caravan owner or the owner's agent from exercising a right of entry under section 199 or 200 (except for a purpose set out in section 201(c) or (d)) during the period specified in the order if it is satisfied that it is reasonable to do so; or

(b) may refuse to make an order.

206A Offence relating to entering a site or caravan occupied by a resident

A caravan park owner, a caravan owner or an owner's agent must not, without reasonable excuse, enter a site or caravan occupied by a resident otherwise than in accordance with this Division.

Penalty: 10 penalty units.

S. 206A
inserted by
No. 45/2002
s. 53,
amended by
No. 67/2010
s. 132.

Pt 4A
(Headings
and ss 206B–
206ZZP)
inserted by
No. 67/2010
s. 10.

Part 4A—Site agreements and site-tenant owned dwellings

Division 1—General requirements for site agreements

S. 206B
inserted by
No. 67/2010
s. 10.

206B Rights of site tenants

Subject to this Act and the terms of a site agreement, a site tenant has a right—

- (a) to occupy and use the Part 4A site to which the site agreement applies; and
- (b) to have his or her Part 4A dwelling situated on that Part 4A site; and
- (c) to use the facilities and common areas of the Part 4A park in which that Part 4A site is located.

S. 206C
inserted by
No. 67/2010
s. 10.

206C Part 4A dwelling not a fixture

Despite any Act or law to the contrary, including the common law, a Part 4A dwelling owned by a site tenant does not form a fixture of the Part 4A site on which the Part 4A dwelling is situated.

S. 206D
inserted by
No. 67/2010
s. 10.

206D Crown land

A site agreement cannot be entered into in relation to Crown land.

S. 206E
inserted by
No. 67/2010
s. 10.

206E Site agreements to be in writing

- (1) A site agreement must be in writing.
- (2) A site owner must not enter into a site agreement with a site tenant that is not in writing.

Penalty: 60 penalty units.

- (3) A failure to comply with this section does not—
 - (a) make the site agreement illegal, invalid or unenforceable; or
 - (b) affect the application of this Act to the site agreement.

206F Terms of site agreement

S. 206F
inserted by
No. 67/2010
s. 10.

- (1) A site agreement—
 - (a) must include the prescribed terms, if any; and
 - (b) may include any other term that is not inconsistent with this Act or the prescribed terms referred to in paragraph (a); and
 - (c) must contain any other prescribed matters.
- (2) A site agreement that does not include a prescribed term is taken to include the prescribed term.
- (3) A term included in a site agreement is void to the extent that—
 - (a) it is inconsistent with this Act; or
 - (b) it purports to exclude, restrict or modify the application of, or the exercise of a right conferred by, this Act; or
 - (c) it is inconsistent with the prescribed terms referred to in subsection (1)(a) or inconsistent with the matters referred to in subsection (1)(c).

206G Harsh and unconscionable terms

S. 206G
inserted by
No. 67/2010
s. 10.

- (1) A site tenant may apply to the Tribunal for an order—
 - (a) declaring a term of a site agreement invalid; or
 - (b) varying a term of a site agreement.

- (2) On an application under subsection (1), the Tribunal, by order, may declare invalid or vary a term of the site agreement if it is satisfied that the term—
 - (a) is harsh or unconscionable; or
 - (b) is such that a court exercising its equitable jurisdiction would grant relief.
- (3) An order under this section has effect according to its terms.

S. 206H
inserted by
No. 67/2010
s. 10.

206H Minimum terms for site agreements in new parks

- (1) A site owner who enters into or renews a site agreement with a site tenant must offer a fixed term site agreement for a minimum term of 5 years if the Part 4A site that is the subject of the site agreement is situated in a Part 4A park that is registered as a caravan park under Part 14 on or after the commencement of section 10 of the **Residential Tenancies Amendment Act 2010**.
- (2) If a site agreement to which subsection (1) applies is entered into for a period of less than 5 years, the site agreement is taken to be a fixed term site agreement for a term of 5 years.

S. 206I
inserted by
No. 67/2010
s. 10.

206I Site agreement consideration period

- (1) A site owner must not give a site tenant—
 - (a) a proposed site agreement; or
 - (b) any other document which contains terms that are proposed to form part of the site agreement—

to sign unless the site owner has given the site tenant a copy of that proposed site agreement or other document at least 20 days earlier.

Penalty: 20 penalty units.

- (2) At the time a site owner gives a site tenant a proposed site agreement or other document in accordance with subsection (1), the site owner must give the site tenant a notice in the prescribed form of the cooling off period and the site tenant's right to rescind the site agreement under section 206J.

206J Cooling off period

S. 206J
inserted by
No. 67/2010
s. 10.

- (1) A site tenant may rescind a site agreement at any time within 5 business days from the date that the site tenant signs the site agreement by providing written notice to the site owner to that effect.
- (2) A notice under subsection (1) must be—
- (a) given to the site owner or an agent of the site owner; or
 - (b) left at the address for service of the site owner specified in the site agreement.
- (3) If a site tenant rescinds a site agreement in accordance with this section, the site tenant is entitled to a refund of all moneys paid by the site tenant under the site agreement less the sum of \$100 or the prescribed amount (whichever is greater) to which the site owner is entitled.

206JA Cooling off period—Part 4A dwelling purchase agreement

S. 206JA
inserted by
No. 56/2012
s. 8.

- (1) This section applies if—
- (a) a site tenant or his or her agent enters into a Part 4A dwelling purchase agreement with—
 - (i) a site owner, whether acting as site owner or as agent of another person; or
 - (ii) an agent of a site owner referred to in subparagraph (i); and

- (b) the Part 4A dwelling that is the subject of the Part 4A dwelling purchase agreement is located or intended to be located on a Part 4A site that is let or intended to be let by the site owner to the site tenant under a site agreement.
- (2) The site tenant may rescind the Part 4A dwelling purchase agreement—
 - (a) if the site tenant has been given a proposed site agreement by the site owner or the site owner's agent—within 20 days from the date that the site agreement was given to the site tenant; or
 - (b) if the site tenant has entered into a site agreement with the site owner and the site tenant rescinds the site agreement in accordance with section 206J—at the time that the site tenant rescinds the site agreement.
- (3) The site tenant may rescind the Part 4A dwelling purchase agreement under subsection (2) by providing written notice to the site owner or the site owner's agent that the Part 4A dwelling purchase agreement is rescinded.
- (4) A notice under subsection (3) must be—
 - (a) given to the site owner or the site owner's agent; or
 - (b) left at the address for service of the site owner specified in the Part 4A dwelling purchase agreement.
- (5) If a site tenant rescinds a Part 4A dwelling purchase agreement in accordance with this section, the site tenant is entitled to a refund of all money paid by the site tenant under the Part 4A dwelling purchase agreement.

(6) A term in a Part 4A dwelling purchase agreement is void to the extent it purports to exclude, restrict or modify the application of, or the exercise of a right conferred by, this section.

(7) In this section—

agent includes employee, contractor and subcontractor;

proposed site agreement includes—

- (a) a copy of that agreement;
- (b) any other document which contains terms that are proposed to form part of the site agreement or a copy of that document;

related party, in relation to a site owner, means—

- (a) the partner, child, parent or sibling of the site owner; or
- (b) the partner of the child, parent or sibling of the site owner; or
- (c) a business partner of the site owner; or
- (d) a corporation owned, managed or effectively controlled by the site owner or a person referred to in paragraph (a), (b) or (c);

site owner includes a related party of a site owner.

Division 2—Bonds

206K What is the maximum bond?

- (1) Subject to this Act, a person must not demand or accept in relation to a site agreement a bond the total of which exceeds—
 - (a) the amount of rent payable under the site agreement for one month, unless an order is in force under section 206M; or

**S. 206K
inserted by
No. 67/2010
s. 10.**

- (b) the maximum amount of the bond determined under an order in force under section 206M.

Penalty: 20 penalty units.

- (2) Subsection (1) does not apply to a site agreement if the amount of rent payable under a site agreement for one week exceeds—
 - (a) \$350; or
 - (b) if a greater amount is prescribed for the purposes of this section, that greater amount.

S. 206L
inserted by
No. 67/2010
s. 10.

206L Application to increase maximum amount of bond

A site owner who wishes to demand a bond in relation to a site agreement or proposed site agreement which exceeds the limit set under section 206K may apply to the Tribunal for an order determining the maximum amount of the bond.

S. 206M
inserted by
No. 67/2010
s. 10.

206M Tribunal may determine maximum bond

On an application under section 206L, the Tribunal may make an order determining the maximum amount of bond payable if it considers that it is reasonable to increase the bond having regard to the character and condition of the Part 4A site.

S. 206N
inserted by
No. 67/2010
s. 10.

206N Not more than one bond is payable in respect of continuous occupation

A person must not demand or accept a bond for a subsequent site agreement under which a site tenant continues in occupation of a Part 4A site if that site tenant—

- (a) has paid a bond for the initial site agreement under which the amount of rent payable for one week does not exceed—

- (i) \$350; or
- (ii) if a greater amount is prescribed for the purposes of section 206K, that greater amount; and
- (b) continues in occupation of the Part 4A site under the subsequent site agreement.

Penalty: 20 penalty units.

206O Condition report

**S. 206O
inserted by
No. 67/2010
s. 10.**

- (1) If a site tenant pays a bond, the site owner must, before the site tenant enters into occupation of the Part 4A site, give the site tenant 2 copies of a condition report signed by or on behalf of the site owner specifying the state of repair and general condition of the Part 4A site on the day specified in the report.

Penalty: 10 penalty units.

- (2) Within 3 business days after entering into occupation of the Part 4A site, the site tenant must return one copy of the condition report to the site owner—
 - (a) signed by or on behalf of the site tenant; or
 - (b) with an endorsement so signed to the effect that the site tenant agrees or disagrees with the whole or any specified part of the report.

206P Condition report is evidence of state of repair

**S. 206P
inserted by
No. 67/2010
s. 10.**

- (1) A statement in a condition report under section 206O is conclusive evidence, for the purposes of this Act, of the state of repair or general condition of the Part 4A site on the day specified in the report if the condition report is signed by or on behalf of the site owner and the site tenant.

(2) Subsection (1) does not apply to—

- (a) a state of repair or general condition that could not reasonably have been discovered on a reasonable inspection of the Part 4A site; or
- (b) a statement with which the site tenant disagrees under an endorsement on the report.

S. 206Q
inserted by
No. 67/2010
s. 10.

206Q Certain guarantees prohibited

- (1) A person must not demand or require a site tenant to obtain a guarantee for the performance of any of the site tenant's duties in relation to the site agreement if the site tenant has paid or is required to pay a bond under a site agreement.

Penalty: 20 penalty units.

- (2) This section does not apply to a site agreement referred to in section 206K(2).
- (3) A guarantee obtained in contravention of this section is invalid and unenforceable.

S. 206R
inserted by
No. 67/2010
s. 10.

206R Maximum amount of certain guarantees

- (1) If a site tenant—
- (a) has not paid a bond or has not been required to pay a bond; and
 - (b) has obtained a guarantee in relation to a site agreement—

the guarantee is unenforceable against the guarantor to the extent to which the amount guaranteed exceeds the amount of rent payable under the site agreement for one month.

- (2) This section does not apply to a site agreement referred to in section 206K(2).

Division 3—Rents and other charges

206S Rent, fees and charges under site agreements

S. 206S
inserted by
No. 67/2010
s. 10.

- (1) A site agreement must include details of—
- (a) the rent, fees and other charges payable under the site agreement; and
 - (b) the amount of the rent, fees and other charges payable under the site agreement; and
 - (c) the purposes for which the rent, fees and other charges are charged under the site agreement; and
 - (d) the basis on which the rent, fees and other charges are calculated and adjusted under the site agreement; and
 - (e) the circumstances in which the rent, fees and other charges may be reviewed; and
 - (f) the commission (if any) that may be charged by the site owner for the sale of the site tenant's Part 4A dwelling.
- (2) A site owner must not require payment of any amount under the site agreement if the amount has not been disclosed in the site agreement in accordance with this section.

206T Limit on rent in advance

S. 206T
inserted by
No. 67/2010
s. 10.

A site owner must not require a site tenant to pay rent more than one month in advance.

Penalty: 20 penalty units.

206U Receipts for rent

S. 206U
inserted by
No. 67/2010
s. 10.

- (1) A person who receives a payment of rent from a site tenant must give a written receipt in accordance with this section to the person making the payment—

- (a) immediately, if the payment is made in person; or
- (b) if the payment is not made in person and a receipt is requested at the time of making the payment, within 5 business days of receiving the payment.

Penalty: 10 penalty units.

- (2) If a person receives a payment of rent from a site tenant and a written receipt is not required to be given under subsection (1), the person must keep a record of the payment of rent until the earlier of—
 - (a) the end of 12 months after receiving the payment; or
 - (b) if the site tenant requests a copy of the record before the end of 12 months after making the payment, the provision of a copy of the record to the site tenant.

Penalty: 10 penalty units.

- (3) If a site tenant requests a copy of a record under subsection (2)(b) before the end of 12 months after making the payment of rent, a person who keeps a record under subsection (2) must provide a copy of that record to the site tenant within 5 business days after receiving the request.

Penalty: 10 penalty units.

- (4) For the purposes of subsection (2), a record must contain information which enables the details specified in subsection (5) to be identified.
- (5) A receipt under this section must be signed by the person who receives the payment and must state—
 - (a) the name of the site tenant and the Part 4A park; and

- (b) the date of receipt; and
 - (c) the period for which payment is made; and
 - (d) the amount paid; and
 - (e) the fact that the payment is for rent.
- (6) The regulations may provide that a prescribed person is exempt from subsection (1), (2) or (5) subject to the conditions, if any, specified in the regulations.

206V How much notice is required of rent increase?

**S. 206V
inserted by
No. 67/2010
s. 10.**

- (1) A site owner must give a site tenant at least 60 days notice in the prescribed form of a proposed rent increase under—
 - (a) a site agreement; or
 - (b) a proposed site agreement that is to replace an existing site agreement.
- (2) A notice of a proposed rent increase under subsection (1) may only provide for one rent increase.
- (3) The notice of a proposed rent increase must include a statement informing the site tenant of the site tenant's right under section 206W to apply within 30 days after the notice is given to the Director to investigate and report on the proposed rent.
- (4) A site owner must not increase the rent payable by a site tenant at intervals of less than 6 months.
- (5) A rent increase in contravention of this section is invalid despite anything to the contrary in the site agreement.

S. 206W
inserted by
No. 67/2010
s. 10.

206W Site tenant may complain to Director about excessive rent

- (1) A site tenant may apply to the Director to investigate and report if the site tenant has received a notice of a rent increase and the site tenant considers that the proposed rent is excessive.
- (2) An application under subsection (1) must be made in writing within 30 days after the notice of the rent increase is given.
- (3) As soon as practicable after receiving an application, the Director must—
 - (a) carry out an investigation; and
 - (b) give a written report to the site tenant and a copy of the report to the site owner.
- (4) The report of the Director must—
 - (a) include a statement informing the site tenant of the site tenant's right under section 206X to apply to the Tribunal for an order in respect of the proposed rent; and
 - (b) take into account the matters referred to in section 206Y(3).

S. 206X
inserted by
No. 67/2010
s. 10.

206X Application to Tribunal about excessive rent

- (1) After receiving a report from the Director under section 206W, the site tenant may apply to the Tribunal for an order declaring the proposed rent excessive.
- (2) An application under subsection (1) must be made within 30 days after the site tenant receives the Director's report.

206Y What can the Tribunal order?

**S. 206Y
inserted by
No. 67/2010
s. 10.**

- (1) If an application is made under section 206X, the Tribunal may—
 - (a) make an order—
 - (i) declaring the proposed rent excessive; and
 - (ii) directing that for the period specified in the order the rent must not exceed the amount specified in the order; or
 - (b) dismiss the application.
- (2) The Tribunal must have regard to the Director's report obtained under section 206W in determining the application.
- (3) The Tribunal must make an order declaring the proposed rent excessive if it is satisfied that the proposed rent is more than that which should reasonably be paid by a site tenant having regard to—
 - (a) the rent payable for a similar Part 4A site in the Part 4A park;
 - (b) the rent payable for a similar Part 4A site in a similar Part 4A park in a similar location;
 - (c) the state of repair and general condition of the Part 4A site and the Part 4A park;
 - (d) any variation in the cost of providing facilities or services that the site owner provides;
 - (e) any changes in the rent and the condition of the Part 4A site or facilities in the Part 4A park since the site tenant first occupied the Part 4A site and since the last rent increase;

- (f) the number of rent increases (if any) in the preceding 24 months, the amount of each rent increase in that period and the timing of those increases;
 - (g) any improvements made to the Part 4A site which should not result in an increase because they were made by the site tenant;
 - (h) the terms of the existing or proposed site agreement (if any).
- (4) If the Tribunal makes an order under subsection (1)(a), a site owner cannot require a site tenant to pay an amount of rent greater than that specified in the order for a period of 6 months after the day on which the order comes into operation.
- (5) The amount specified in the order must not be less than the amount payable by the site tenant immediately before the notice was given under section 206V.

S. 206Z
inserted by
No. 67/2010
s. 10.

206Z Payment of increased rent pending Tribunal decision

- (1) Pending the Tribunal's decision under section 206Y, the site tenant must pay, from the time the proposed increase is to apply, the lesser of—
- (a) the increased rent specified in the notice under section 206V; or
 - (b) 110% of the rent immediately before the notice was given.
- (2) If the Tribunal makes an order under section 206Y, it may also order that any excess rent paid by the site tenant from the time the increase took effect until the date of the order be refunded by the site owner.
- (3) The order may specify the procedure for the refund to the site tenant.

206ZA Additional charge

S. 206ZA
inserted by
No. 67/2010
s. 10.

- (1) A site owner may charge a site tenant a reasonable additional charge for any visitor who stays on the Part 4A site that is occupied by the site tenant.
- (2) A site tenant may apply to the Tribunal for an order that the additional charge imposed is unreasonable.
- (3) If, after hearing the site tenant and the site owner, the Tribunal determines that the amount of the additional charge is unreasonable, it may determine the amount of additional charge to be paid by the site tenant and make an order accordingly.

206ZB Rent must be reduced if services are reduced

S. 206ZB
inserted by
No. 67/2010
s. 10.

- (1) Despite anything to the contrary in the site agreement, if a site owner ceases providing services to a site tenant, the site owner must reduce the rent by—
 - (a) the amount agreed between them; or
 - (b) an amount determined by the Tribunal in the absence of any agreement on an application by either party.
- (2) If the Tribunal determines an amount under subsection (1)(b), it may also order that—
 - (a) the reduction in rent is to take effect from the time the site owner ceased to provide services to the site tenant; and
 - (b) the site owner is to refund to the site tenant any excess rent paid by the site tenant from the time the site owner ceased to provide services until the date of the order.

S. 206ZC
inserted by
No. 67/2010
s. 10.

206ZC Site tenant's goods not to be taken for rent

A person must not take or dispose of the goods or Part 4A dwelling of a site tenant on account of rent owing by the site tenant.

Penalty: 20 penalty units.

Division 4—Other charges

S. 206ZD
inserted by
No. 67/2010
s. 10.

206ZD Fee for supply of key

A site owner may charge a reasonable initial fee for the supply of a key or device enabling a site tenant to gain vehicular access to the Part 4A park.

S. 206ZE
inserted by
No. 67/2010
s. 10.

206ZE Site tenant's liability for electricity, gas and water charges

- (1) A site tenant is liable for all charges made for the supply or use of electricity, gas, water, drainage and sewerage to a Part 4A site while the site tenant occupies the Part 4A site, if those services are separately metered.
- (2) A site tenant is liable for all charges in respect of the supply or use of bottled gas at a Part 4A site while the site tenant occupies the Part 4A site.

S. 206ZF
inserted by
No. 67/2010
s. 10.

206ZF Site owner's liability for electricity, gas and water charges

A site owner is liable for—

- (a) the installation costs and charges in respect of the initial connection to a Part 4A site of any electricity, water or gas (including bottled gas) supply service;
- (b) the cost of all services to a Part 4A site if those services are not separately metered;

- (c) all charges arising from a water supply service to a separately metered Part 4A site that are not based on the amount of water supplied or used;
- (d) all charges related to the supply or use of sewerage and drainage services to or at a separately metered Part 4A site that are not based on the extent of use of the services.

206ZG Reimbursement

S. 206ZG
inserted by
No. 67/2010
s. 10.

- (1) If a site owner pays for anything for which a site tenant is liable under section 206ZE, the site tenant must reimburse the site owner within 28 days after receiving a written request for reimbursement attached to a copy of the account and the receipt or other evidence of payment.
- (2) If a site tenant pays for anything for which the site owner is liable under section 206ZF, the site owner must reimburse the site tenant within 28 days after receiving a written request for reimbursement attached to a copy of the account and the receipt or other evidence of payment.
- (3) Subsection (1) does not apply if the site owner directly bills the site tenant under a re-sale agreement with a supply authority.

206ZH Site owner must not seek overpayment for utility charges

S. 206ZH
inserted by
No. 67/2010
s. 10.

- (1) A site owner must not seek payment or reimbursement for a cost or charge under section 206ZG that is more than the amount that the relevant supplier of the utility would have charged the site tenant.

Penalty: 20 penalty units.

- (2) If the relevant supplier of the utility has issued an account to the site owner, a site owner cannot recover from the site tenant an amount which includes any amount that could have been claimed as a concession or rebate by or on behalf of the site tenant from the relevant supplier of the utility.
- (3) Subsection (2) does not apply if the concession or rebate—
 - (a) must be claimed by the site tenant and the site owner has given the site tenant the opportunity to claim it and the site tenant does not do so by the payment date set by the relevant supplier of the utility; or
 - (b) is paid directly to the site tenant as a refund.

Division 5—General duties of site tenants

S. 206ZI
inserted by
No. 67/2010
s. 10.

206ZI Site tenant's use of site

- (1) A site tenant must use the Part 4A site for residential purposes only and in accordance with the site agreement.
- (2) A site tenant must—
 - (a) use the Part 4A site, Part 4A park and facilities properly; and
 - (b) ensure that his or her visitors (if any) do the same.

S. 206ZJ
inserted by
No. 67/2010
s. 10.

206ZJ Site tenant must not use site for illegal purpose

A site tenant must not use the Part 4A site or permit its use for any purpose that is illegal at common law or under an Act.

S. 206ZK
inserted by
No. 67/2010
s. 10.

206ZK Site tenant's duty to pay rent

A site tenant must pay the rent, fees and other charges agreed with the site owner on the due dates and in the agreed manner.

206ZL Quiet enjoyment—site tenant's duty

S. 206ZL
inserted by
No. 67/2010
s. 10.

A site tenant must not do anything in or near the Part 4A dwelling, Part 4A site or Part 4A park or allow his or her visitors to the Part 4A site or Part 4A park to do anything which interferes with—

- (a) the privacy and peace and quiet of other occupants of the Part 4A park; or
- (b) the proper use and enjoyment of the Part 4A park by other occupants of the Part 4A park.

206ZM Site tenant must keep site clean

S. 206ZM
inserted by
No. 67/2010
s. 10.

- (1) A site tenant must keep the Part 4A site clean and tidy.
- (2) A site tenant must maintain the Part 4A site and his or her Part 4A dwelling in a manner and condition that do not detract from the general standard of the Part 4A park as set by the site owner from time to time.

206ZN Site tenant must not erect structures

S. 206ZN
inserted by
No. 67/2010
s. 10.

A site tenant must not erect any structure other than a Part 4A dwelling on the Part 4A site or in the Part 4A park without the prior written consent of the site owner.

206ZO Site tenant must notify site owner of and compensate for damage

S. 206ZO
inserted by
No. 67/2010
s. 10.

- (1) If any damage other than fair wear and tear is caused to a Part 4A site or any facility in the Part 4A park by the site tenant or his or her visitors, the site tenant must—
 - (a) repair the damage; or

(b) notify the site owner of the damage and pay compensation for the damage to the site owner.

(2) A site tenant must report to the site owner any damage to or breakdown of communal facilities of which the site tenant has knowledge.

S. 206ZP
inserted by
No. 67/2010
s. 10.

206ZP Number of persons residing on Part 4A site

A site tenant must not allow more than the number of persons agreed with the site owner to reside on the Part 4A site.

S. 206ZQ
inserted by
No. 67/2010
s. 10.

206ZQ Site tenant must observe Part 4A park rules

A site tenant must observe all Part 4A park rules made from time to time in accordance with this Act.

Division 6—General duties of site owners

S. 206ZR
inserted by
No. 67/2010
s. 10.

206ZR Site owner must give tenant certain information

(1) Before entering into a site agreement, the site owner must give the site tenant a written statement in a form approved by the Director setting out in summary form the rights and duties of a site owner and site tenant under this Act.

Penalty: 20 penalty units.

(2) Before entering into a site agreement, the site owner must give the site tenant a written statement of any other prescribed matters.

Penalty: 20 penalty units.

(3) If a site owner—

(a) supplies false information to the site tenant in the statements required to be given by this section; or

- (b) fails to supply all the information required to be supplied in the statements required to be given by this section—

the site tenant may rescind the site agreement that has been entered into on the basis of that information within 28 days of the date that the site agreement is entered into.

- (4) If—

- (a) a notice of intention to acquire land has been served under section 6 of the **Land Acquisition and Compensation Act 1986**; and

- (b) the land is subject to a site agreement—

the site tenant may rescind the site agreement at any time within 28 days from the date that the site agreement is entered into.

206ZS Part 4A site plans

S. 206ZS
inserted by
No. 67/2010
s. 10.

- (1) Before entering into a site agreement, the site owner must give the site tenant a plan of the Part 4A park that identifies the Part 4A site on which the site tenant's Part 4A dwelling is or is to be situated.

Penalty: 20 penalty units.

- (2) A site tenant may apply to the Tribunal for an order that the site owner give the site tenant a plan described in subsection (1).

206ZT Site owner must provide access

S. 206ZT
inserted by
No. 67/2010
s. 10.

A site owner must—

- (a) provide 24 hours vehicular access for all site tenants to all Part 4A sites; and
(b) provide 24 hour access for all site tenants to the Part 4A park; and

- (c) provide access during all reasonable hours for site tenants to the recreational areas and laundry and communal facilities that the site tenant is entitled to access under the terms of a site agreement.

S. 206ZU
inserted by
No. 67/2010
s. 10.

206ZU Quiet enjoyment—site owner's duty

- (1) A site owner must not unreasonably restrict or interfere with the privacy, peace and quiet or proper use and enjoyment of a Part 4A dwelling, Part 4A site and communal facilities by a site tenant.
- (2) A site owner must not unreasonably restrict or interfere with a site tenant's occupation of a Part 4A dwelling.

S. 206ZV
inserted by
No. 67/2010
s. 10.

206ZV Site owner must keep Part 4A park clean

- (1) A site owner must keep common areas, facilities, gardens, roadways, paths and recreation areas in the Part 4A park clean and in a safe condition.
- (2) A site owner must arrange for the collection of garbage of site tenants and other garbage from the Part 4A park.

S. 206ZW
inserted by
No. 67/2010
s. 10.

206ZW Duty of site owner to maintain communal areas

- (1) A site owner must maintain, repair and keep clean and tidy all communal bathrooms, toilets, laundries and other communal facilities in the Part 4A park.
- (2) When repairing or renovating communal facilities, a site owner must—
 - (a) minimise inconvenience and disruption to site tenants; and
 - (b) if necessary, provide temporary substitute facilities.

206ZX Site owner to give additional information

S. 206ZX
inserted by
No. 67/2010
s. 10.

- (1) If there is no agent acting for the site owner, a site owner must, on or before the required day, give the site tenant—
- (a) written notice of the site owner's full name and address for the service of documents; and
 - (b) an emergency telephone number to be used in the case of the need for urgent repairs.

Penalty: 10 penalty units.

- (2) If there is an agent acting for the site owner, a site owner must, on or before the required day, give the site tenant—
- (a) written notice of the agent's full name and address for service of documents and the agent's telephone number; and
 - (b) a written statement setting out—
 - (i) whether or not the agent can authorise urgent repairs; and
 - (ii) if the agent can authorise urgent repairs, the maximum amount for repairs which the agent can authorise; and
 - (iii) the agent's telephone number for urgent repairs.

Penalty: 10 penalty units.

- (3) A site owner must give a site tenant notice in writing of any change in the information set out in subsection (1) or (2) before the end of 7 days after the change.

Penalty: 10 penalty units.

- (4) In this section ***required day*** means a day 7 days after a person becomes a site tenant.

Division 7—Part 4A park rules

S. 206ZY
inserted by
No. 67/2010
s. 10.

206ZY Site owner may make Part 4A park rules

- (1) A site owner may from time to time make rules relating to the use, enjoyment, control and management of the Part 4A park.
- (2) Without limiting subsection (1), Part 4A park rules may be made in relation to—
 - (a) the making and abatement of noise;
 - (b) motor vehicle speed limits within the Part 4A park;
 - (c) the parking of motor vehicles;
 - (d) the disposal of refuse;
 - (e) the keeping of pets;
 - (f) the playing of games and other sports activities;
 - (g) the use and operation of communal facilities.
- (3) A site owner must—
 - (a) provide a copy of the Part 4A park rules to a site tenant before entering into a site agreement with the site tenant; and
 - (b) take all reasonable steps to ensure that the Part 4A park rules are observed by all site tenants; and
 - (c) ensure that the Part 4A park rules are reasonable and are enforced and interpreted consistently and fairly.

S. 206ZZ
inserted by
No. 67/2010
s. 10.

206ZZ Amendment of Part 4A park rules

- (1) A site owner must give a site tenant at least 7 days written notice of any proposed change in the Part 4A park rules.

Penalty: 20 penalty units.

- (2) A site owner must consult with the site tenants in the Part 4A park in respect of a proposed change to the Part 4A park rules.

Penalty: 20 penalty units.

- (3) A site owner is taken to have consulted with the site tenants in accordance with this section if the site owner has—
- (a) provided details of the proposed amendment to the Part 4A park rules in writing to the site tenants; and
 - (b) allowed at least 14 days for the site tenants to respond in writing; and
 - (c) considered and responded in writing to any written responses received from the site tenants.

206ZZA What if the Part 4A park rules are thought to be unreasonable?

**S. 206ZZA
inserted by
No. 67/2010
s. 10.**

- (1) A site tenant may apply to the Tribunal for an order declaring a Part 4A park rule to be unreasonable.
- (2) If the Tribunal considers that a Part 4A park rule is unreasonable, it may declare the rule invalid.
- (3) In making a declaration under subsection (3) the Tribunal must have regard to—
 - (a) the location of the Part 4A park; and
 - (b) the number and characteristics of the site tenants and other residents of the Part 4A park; and
 - (c) the internal layout of the Part 4A park; and
 - (d) the amenities, improvements, facilities and other physical features of the Part 4A park; and

- (e) the levels of rent and other charges paid by the site tenants; and
- (f) any other prescribed matters.

Division 8—Site tenants' committees

S. 206ZZB
inserted by
No. 67/2010
s. 10.

206ZZB Participation in site tenants' committee

A site tenant is entitled to participate in any site tenants' committee formed in respect of a Part 4A park of which he or she is a site tenant.

S. 206ZZC
inserted by
No. 67/2010
s. 10.

206ZZC Site owner's duties to site tenants' committees

- (1) A site owner must not unreasonably interfere with a site tenant's right to participate in a site tenants' committee.

Penalty: 20 penalty units.

- (2) A site owner must allow the site tenants to use suitable communal park facilities for meetings of a site tenants' committee.

Division 9—Assignment and sub-letting

S. 206ZZD
inserted by
No. 67/2010
s. 10.

206ZZD Assignment by a site tenant

- (1) A site tenant must not assign a site agreement without the site owner's written consent.
- (2) A site owner must not unreasonably withhold consent to the assignment of a site agreement.
- (3) An assignment of a site agreement without the site owner's consent is invalid unless the Tribunal has determined that consent is not required.

S. 206ZZE
inserted by
No. 67/2010
s. 10.

206ZZE Sub-letting by a site tenant

- (1) A site tenant must not sub-let the whole or any part of a Part 4A site to which a site agreement applies without the site owner's written consent.

- (2) A site owner must not unreasonably withhold consent to the sub-letting of the whole or a part of the Part 4A site.
- (3) A sub-letting of the whole or a part of the Part 4A site without the site owner's consent is invalid unless the Tribunal has determined that consent is not required.

206ZZF Site tenant may apply to Tribunal

**S. 206ZZF
inserted by
No. 67/2010
s. 10.**

- (1) A site tenant may apply to the Tribunal for a determination that the consent of the site owner to the assignment of a site agreement or the sub-letting of the whole or any part of a Part 4A site is not required if—
 - (a) the site owner withholds consent; and
 - (b) the site tenant believes that the withholding of the consent is unreasonable.
- (2) The Tribunal may order that consent is not required.

206ZZG Site owner cannot ask for fee for giving consent

**S. 206ZZG
inserted by
No. 67/2010
s. 10.**

- (1) A site owner must not demand or receive a fee or payment for giving consent to the assignment of a site agreement or the sub-letting of the whole or any part of a Part 4A site.
Penalty: 20 penalty units.
- (2) A site owner must not refuse to consent to an assignment of a site agreement or the sub-letting of the whole or any part of a Part 4A site on the ground that the site tenant has refused to pay a fee or amount for the consent.
Penalty: 20 penalty units.

- (3) If the site tenant has paid the site owner a fee or amount for the consent to an assignment or sub-letting, the site tenant may apply to the Tribunal for an order that the site owner refund to the site tenant the amount of the payment.
- (4) This section does not prevent a site owner from requiring the site tenant to bear any fees, costs or charges incurred by the site owner in connection with the preparation of a written assignment of a site agreement.

S. 206ZZH
inserted by
No. 67/2010
s. 10.

206ZZH Sale of Part 4A dwelling

- (1) A site owner may enter into an agreement with a site tenant or former site tenant to sell a Part 4A dwelling on behalf of the site tenant or former site tenant.

- (2) A site owner must not require a site tenant to enter into an agreement under subsection (1).

Penalty: 40 penalty units.

- (3) A site owner who enters into an agreement to sell a Part 4A dwelling on behalf of a site tenant or former site tenant must not charge a commission for the sale unless the scale or amount of commission has been disclosed in accordance with section 206S.

Penalty: 10 penalty units.

- (4) A site owner must not by act or omission obstruct or hinder the sale of a Part 4A dwelling by a site tenant.

Penalty: 60 penalty units in the case of a natural person.

300 penalty units in the case of a body corporate.

Division 10—Rights of entry

206ZZI Entry of Part 4A site and Part 4A dwelling by site owner

S. 206ZZI
inserted by
No. 67/2010
s. 10.

- (1) A site owner or a person appointed in writing as the site owner's agent for the purposes of this section has a right to enter a Part 4A site occupied by a site tenant—
 - (a) if the site tenant agrees at the time entry is sought; or
 - (b) if there is an emergency and immediate entry is necessary to save life or valuable property; or
 - (c) if the Tribunal has made an abandonment order under section 317W; or
 - (d) for a purpose set out in section 206ZZJ, at any time between 8 a.m. and 6 p.m. on any day (except a public holiday) if at least 24 hours notice has been given to the site tenant in accordance with section 206ZZL.
- (2) A site owner or a person appointed in writing as the site owner's agent for the purposes of this section has a right to enter a Part 4A dwelling occupied by a site tenant—
 - (a) if the site tenant agrees at the time entry is sought; or
 - (b) if there is an emergency and immediate entry is necessary to save life or valuable property; or
 - (c) if the Tribunal has made an abandonment order under section 317W.

S. 206ZZJ
inserted by
No. 67/2010
s. 10.

206ZZJ Grounds for entry of Part 4A site

A right of entry in respect of a Part 4A site may be exercised if—

- (a) before giving notice of entry, a notice to vacate or a notice of intention to vacate the Part 4A site has been given and entry is required to show the Part 4A site to a prospective site tenant; or
- (b) the Part 4A site is to be sold or used as security for a loan and entry is required to show the Part 4A site to a prospective buyer or lender; or
- (c) entry is required to enable the site owner to carry out a duty under this Act or any other Act; or
- (d) the site owner or the site owner's agent has reasonable grounds to believe that the site tenant has failed to comply with his or her duties under this Act; or
- (e) entry is required to enable inspection of the Part 4A site and entry for that purpose has not been made within the last 6 months.

S. 206ZZK
inserted by
No. 67/2010
s. 10.

206ZZK Manner of entry

A person exercising a right of entry under this Division—

- (a) must do so in a reasonable manner; and
- (b) must not stay on the Part 4A site or in the Part 4A dwelling longer than is necessary to achieve the purpose of the entry without the site tenant's consent.

206ZZL What must be in a notice of entry?

A notice under this Division requiring entry must—

- (a) be in writing; and
- (b) state why the site owner or the site owner's agent wishes to enter; and
- (c) be given—
 - (i) by post; or
 - (ii) by delivering it personally to the site tenant between the hours of 8 a.m. and 6 p.m.

S. 206ZZL
inserted by
No. 67/2010
s. 10.

206ZZM Site tenant has duty to permit entry

A site tenant has a duty to permit a person exercising a right of entry in accordance with this Division to enter the Part 4A site or Part 4A dwelling (as the case requires).

S. 206ZZM
inserted by
No. 67/2010
s. 10.

206ZZN What if damage is caused during entry?

- (1) A site tenant may apply to the Tribunal for an order for compensation if the site owner or the site owner's agent causes damage to the site tenant's goods on the Part 4A site, including the Part 4A dwelling, when exercising a right of entry under this Division.
- (2) If an application is made under subsection (1), the Tribunal—
 - (a) may make an order for payment of any compensation that it thinks fit if it is satisfied that damage was caused to the site tenant's goods on the Part 4A site; or
 - (b) may refuse to make an order.

S. 206ZZN
inserted by
No. 67/2010
s. 10.

S. 206ZZO
inserted by
No. 67/2010
s. 10.

206ZZO What if a person exercising right of entry fails to comply with Division?

- (1) If the site owner or the site owner's agent has exercised a right of entry and in doing so fails to comply with this Division, the site tenant may apply to the Tribunal for an order restraining the site owner or the site owner's agent from exercising a right of entry under this Division for a specified period.
- (2) If an application is made under subsection (1), the Tribunal—
 - (a) may make an order prohibiting the site owner or the site owner's agent from exercising a right of entry under this Division (except for a purpose set out in section 206ZZJ(c) or (d)) during the period specified in the order if it is satisfied that it is reasonable to do so; or
 - (b) may refuse to make an order.

S. 206ZZP
inserted by
No. 67/2010
s. 10.

206ZZP Offence relating to entering a site occupied by a site tenant

A site owner or a site owner's agent must not, without reasonable excuse, enter a Part 4A site or a Part 4A dwelling occupied by a site tenant otherwise than in accordance with this Division.

Penalty: 10 penalty units.

Part 5—Compensation and compliance

207 Definitions

In this Part—

duty provision means—

S. 207 def. of
duty provision
amended by
Nos 45/2002
s. 87(1),
67/2010
s. 11(1).

- (a) in relation to rented premises—
 - (i) section 89; or
 - (ii) any provision of Division 5 of Part 2, except sections 59, 62, 66 and 71; or
- (b) in relation to a rooming house—
 - (i) section 140; or
 - (ii) any provision of Division 5 of Part 3, except section 111; or
- (c) in relation to a caravan park—
 - (i) section 204; or
 - (ii) any provision of Division 5 of Part 4, except section 168; or
- (d) in relation to a Part 4A park—
 - (i) section 206ZZM; or
 - (ii) any provision of Division 5 or Division 6 of Part 4A;

required time means—

S. 207 def. of
required time
amended by
Nos 45/2002
s. 87(2)(a)(b),
67/2010
s. 11(2).

- (a) in relation to rented premises—
 - (i) for a duty under section 89 in relation to a right of entry for a purpose set out in section 86(1)(a), (c) or (f), 14 days; or

- (ia) for a duty under section 89 in relation to a right of entry for a purpose set out in section 86(1)(b), (d) or (e), 3 days; or
 - (ii) for a duty under Division 5 of Part 2, 14 days; or
- (b) in relation to a rooming house, for a duty under section 140 or Division 5 of Part 3, 3 days; or
- (c) in relation to a caravan park—
 - (i) for a duty under section 204 in relation to a right of entry for a purpose set out in section 201(a), (c) or (e), 7 days; or
 - (ia) for a duty under section 204 in relation to a right of entry for a purpose set out in section 201(b) or (d), 3 days; or
 - (ii) for a duty under Division 5 of Part 4, 7 days; or
- (d) in relation to a Part 4A site—
 - (i) for a duty under section 206ZZM in relation to a right of entry for a purpose set out in section 206ZZJ(a), (c) or (e), 14 days; or
 - (ia) for a duty under section 206ZZM in relation to a right of entry for a purpose set out in section 206ZZJ(b) or (d), 3 days; or
 - (ii) for a duty under Division 5 or Division 6 of Part 4A, 14 days.

208 Breach of duty notice

- (1) A person to whom a duty is owed under a duty provision or that person's agent, may give a breach of duty notice to a person in breach of that duty.
- (2) A notice under subsection (1) must—
 - (a) specify the breach; and
 - (b) give details of the loss or damage caused by the breach; and
 - (c) require the person, within the required time after receiving the notice—
 - (i) to remedy the breach if possible; or
 - (ii) to compensate the person to whom the duty is owed; and
 - (d) state that the person in breach must not commit a similar breach again; and
 - (e) state that if the notice is not complied with—
 - (i) an application for compensation or a compliance order may be made to the Tribunal; or
 - (ii) if section 240 or 317V (as the case requires) applies, a notice of intention to vacate may be given; or
 - (iii) if section 249, 283, 308 or 317ZB (as the case requires) applies, a notice to vacate may be given; and
 - (f) be in writing; and
 - (g) be addressed to the person allegedly in breach of the duty or his or her agent; and
 - (h) be signed by the person to whom the duty is owed or by that person's agent.

S. 208(2)(e)
substituted by
No. 45/2002
s. 88(a).

S. 208(2)(e)(ii)
amended by
No. 67/2010
s. 12(a).

S. 208(2)(e)(iii)
amended by
No. 67/2010
s. 12(b).

S. 208(2)(h)
amended by
No. 45/2002
s. 88(b).

S. 209
amended by
No. 67/2010
s. 78 (ILA
s. 39B(1)).

209 Application for compensation or compliance order for breach of duty

- (1) If a breach of duty notice is not complied with, the person who gave it may apply to the Tribunal for a compensation order or a compliance order.
- (2) Subject to section 115 of the **Australian Consumer Law and Fair Trading Act 2012**, the Director may make an application under this section on behalf of the person who gave the notice without that person's consent.

S. 209(2)
inserted by
No. 67/2010
s. 78,
amended by
No. 23/2016
s. 25(1).

209AA Application for compensation or compliance order for breach of prescribed term in standard form tenancy agreement

- (1) Subject to subsection (2), if a party to a fixed term tenancy agreement for more than 5 years has breached a term of the tenancy agreement, the other party may apply to the Tribunal for a compensation order or a compliance order.
- (2) Subsection (1) does not apply to an additional term in a fixed term tenancy agreement for more than 5 years that is included in the tenancy agreement under section 27A(1).

S. 209AA
inserted by
No. 40/2018
s. 13.

S. 209A
inserted by
No. 45/2002
s. 77.

209A Tribunal must hear application urgently

The Tribunal must hear an application under section 209 within 5 business days after the application is made if the application relates to—

- (a) a breach of section 89 in relation to a right of entry for a purpose set out in section 86(1)(b); or
- (ab) a breach of section 120A; or

S. 209A(ab)
inserted by
No. 56/2012
s. 6.

- (b) a breach of section 140 in relation to a right of entry for a purpose set out in section 137(b); or
- (c) a breach of section 204 in relation to a right of entry for a purpose set out in section 201(b); or
- (d) a breach of section 206ZZM in relation to a right of entry for a purpose set out in section 206ZZJ(b).

S. 209A(c)
amended by
No. 67/2010
s. 13(a).

S. 209A(d)
inserted by
No. 67/2010
s. 13(b).

210 Application to Tribunal for compensation order on other grounds

- (1) A party to a tenancy agreement may apply to the Tribunal for an order for payment to the applicant by the other party to the tenancy agreement of compensation for loss or damage suffered by the applicant because—
 - (a) the other party failed to comply with the tenancy agreement or that party's duties under this Act relating to the tenancy agreement; or
 - (b) the applicant has paid to the other party more than the applicant is required to pay in accordance with this Act or the tenancy agreement.
- (2) This section does not apply to a duty under a duty provision or section 66.

210A Application to Tribunal by resident for compensation

S. 210A
inserted by
No. 63/2005
s. 23.

If a rooming house owner fails to comply with section 94B, 529 or 531 in relation to a resident, the resident may apply to the Tribunal for an order under section 212(2A).

S. 210B
inserted by
No. 67/2010
s. 14.

210B Application to Tribunal by site tenant or site owner for compensation

- (1) A party to a site agreement may apply to the Tribunal for an order for payment to the applicant by the other party to the site agreement of compensation for loss or damage suffered by the applicant because—
 - (a) the other party failed to comply with the site agreement or that party's duties under this Act relating to the site agreement; or
 - (b) the applicant has paid to the other party more than the applicant is required to pay in accordance with this Act or the site agreement.
- (2) This section does not apply to a duty under a duty provision or section 206ZR.

S. 211
amended by
Nos 63/2005
s. 24, 67/2010
s. 15(a).

211 Matters which may be considered by Tribunal

The Tribunal, in hearing an application under section 209, 210, 210A or 210B, may take into account—

S. 211(a)
amended by
No. 67/2010
s. 15(b).

- (a) whether or not the person from whom compensation is claimed has taken all reasonable steps to comply with the duties under this Act or under the tenancy agreement or site agreement in respect of which the claim is made; and
- (b) in the case of a breach of a tenancy agreement, whether or not the applicant has consented to the failure to comply with the duties in respect of which the claim is made; and

S. 211(ba)
inserted by
No. 67/2010
s. 15(c).

- (ba) in the case of a site agreement—
 - (i) the remaining term of the site agreement;

- (ii) the costs of finding an alternative Part 4A site or entering into a new site agreement;
- (iii) the costs for the relocation of the Part 4A dwelling, including the costs of disassembly, transport and reassembly of the Part 4A dwelling;
- (iv) the costs of disposing of the Part 4A dwelling;
- (v) any other prescribed matters; and
- (bb) in the case of a breach of an applicable rooming house standard, whether the rooming house owner has been convicted of or found guilty of an offence under section 142B for the same breach; and
- (c) whether or not money has been paid to or recovered by the applicant by way of compensation, including money recovered or entitled to be recovered from the bond; and
- (d) whether any reduction or refund of rent or other allowance has been made to the applicant; and
- (e) whether or not action has been taken by the applicant to mitigate the loss or damage; and
- (f) any offer of compensation; and
- (g) if a claim is made with respect to damage to property, any action taken by the person from whom compensation is claimed to repair the damage at that person's own expense.

S. 211(bb)
inserted by
No. 56/2012
s. 7.

212 Orders of Tribunal

S. 212(1A)
inserted by
No. 40/2018
s. 14.

- (1) In the case of an application under section 209, if the Tribunal is satisfied that the person was entitled to give the notice and that it was not complied with it may make any or all of the following orders—
- (a) the person in breach must remedy the breach as specified in the order;
 - (b) the person in breach must pay compensation as specified in the order;
 - (c) the person in breach must refrain from committing a similar breach.

S. 212(2)
amended by
No. 67/2010
s. 16(a).

- (1A) In the case of an application under section 209AA, if the Tribunal is satisfied that the term of the tenancy agreement was breached the Tribunal may make any or all of the following orders—
- (a) the party in breach must remedy the breach as specified in the order;
 - (b) the party in breach must pay compensation as specified in the order;
 - (c) the party in breach must refrain from committing a similar breach.
- (2) In the case of an application under section 210 or 210B, if the Tribunal is satisfied that compensation should be paid it may make an order directing a person to pay compensation as specified in the order.

S. 212(2A)
inserted by
No. 63/2005
s. 25(1).

- (2A) In the case of an application under section 210A, if the Tribunal is satisfied that a rooming house owner has failed to comply with section 94B, 529 or 531—
- (a) the Tribunal may make an order requiring the rooming house owner to comply with that provision; and

- (b) if the Tribunal is satisfied that compensation should be paid it may make an order directing the rooming house owner to pay compensation as specified in the order.
- (3) If an application is in relation to an alleged breach of house rules, caravan park rules or Part 4A park rules, in addition to the orders set out in subsection (1), or instead of those orders, the Tribunal may declare the rule to be invalid. **S. 212(3) amended by No. 67/2010 s. 16(b).**
- (4) If an order is made against a tenant, resident or site tenant, the order must specify that if the order is not complied with, the tenant, resident or site tenant may be given a notice to vacate the rented premises, room, site or Part 4A site. **S. 212(4) amended by No. 67/2010 s. 16(c)(d).**
- (5) If an order for compensation is made in favour of a tenant, resident or site tenant, the order may specify that the compensation be in the form of a refund or reduction of the rent or hiring charges payable by the tenant, resident or site tenant. **S. 212(5) amended by Nos 63/2005 s. 25(2), 67/2010 s. 16(d).**

213 Compensation for unpaid rent

- (1) A landlord is not entitled to claim compensation under this Act for a failure of a tenant to pay rent under a tenancy agreement unless the rent is unpaid for at least 14 days after it has accrued due.
- (2) Subsection (1) does not apply if the tenant on not less than 2 previous occasions has failed to pay the rent under the same tenancy agreement within 14 days after it has accrued due.

* * * * *

S. 213(3) repealed by No. 45/2002 s. 78.

S. 213AA
inserted by
No. 67/2010
s. 17.

213AA Compensation for unpaid rent under site agreement

- (1) A site owner is not entitled to claim compensation under this Act for a failure of a site tenant to pay rent under a site agreement unless the rent is unpaid for at least 30 days after it has accrued due.
- (2) Subsection (1) does not apply if the site tenant on not less than 2 previous occasions has failed to pay the rent under the same site agreement within 30 days after it has accrued due.

S. 213A
inserted by
No. 45/2002
s. 79.

213A Application for payment of rent arrears or hiring charge arrears from bond

S. 213A(1)
amended by
No. 67/2010
s. 18(1).

- (1) If an application for a possession order is made under Part 7 as a result of a failure by a tenant, a resident or a site tenant to pay rent or, in the case of a caravan, a failure by the resident to pay a hiring charge, the applicant, at the same time, may apply to the Tribunal for payment of compensation by the tenant, resident or site tenant for the unpaid rent or hiring charge owed.

- (2) On an application under subsection (1), the Tribunal may—

S. 213A(2)(a)
amended by
No. 67/2010
s. 18(2).

- (a) make a determination of the amount of rent owing to the landlord, rooming house owner, caravan park owner or site owner or, in the case of a caravan owner, the amount of hiring charge owing to the caravan owner, at the date of the application; and

S. 213A(2)(b)
amended by
No. 67/2010
s. 18(3).

- (b) make a determination directing the Authority, on termination of the tenancy agreement or site agreement or when the residency right ends, to pay out an amount of bond to or on account of the landlord, rooming house owner, caravan park owner, site owner or caravan owner (as the case

requires) in respect of the rent or hiring charge owing.

213B Application to Tribunal for loss or damage

- (1) If a possession order is made under Part 7 as a result of a failure by a tenant to pay rent, an application by the landlord to the Tribunal under this Part (other than under section 213A) for payment by the tenant of compensation for loss or damage suffered by the landlord as a result of the failure of the tenant to pay rent must be made within 28 days after the tenant delivers up vacant possession of the rented premises.
- (2) If a possession order is made under Part 7 as a result of a failure by a site tenant to pay rent, an application by the site owner to the Tribunal under this Part for payment by the site tenant of compensation for loss or damage suffered by the site owner as a result of the failure of the site tenant to pay rent must be made within 28 days after the site tenant delivers up vacant possession of the Part 4A site.

S. 213B
(Heading)
amended by
No. 67/2010
s. 19(1).
S. 213B
inserted by
No. 45/2002
s. 79,
amended by
No. 67/2010
s. 19(2) (ILA
s. 39B(1)).

S. 213B(2)
inserted by
No. 67/2010
s. 19(2).

214 Can a person recover compensation under this Part as well as from a bond?

- (1) A person who has recovered compensation from a bond is not precluded from taking proceedings under this Part to recover an additional amount by way of compensation.

* * * * *

S. 214(2)
repealed by
No. 52/1998
s. 236(j).

214A Compensation for loss of rent under terminated site agreement

- (1) If the Tribunal makes an order under section 212(2) directing a person to pay compensation to a site owner for loss or damage

S. 214A
inserted by
No. 67/2010
s. 20.

suffered by the site owner as a result of the termination of a site agreement under section 317E or section 317I, an amount specified in the order in respect of the loss of rent that would have been payable under the site agreement, if it had not been terminated, must not exceed the lesser of—

- (a) the rent that would have been payable by the site tenant under the site agreement, if the site agreement had not been terminated, for a 12 month period from the day of the termination of the site agreement; or
 - (b) the rent that would have been payable by the site tenant under the site agreement, if the site agreement had not been terminated, for the period from the day of the termination of the site agreement until the day the Part 4A site is occupied by another site tenant or other occupant; or
 - (c) the rent that would have been payable by the site tenant under the site agreement, if the site agreement had not been terminated, for the remaining term of the site agreement.
- (2) Subsection (1) does not limit the amount the Tribunal may direct a person to pay to a site owner as compensation for any other loss or damage suffered by the site owner as a result of the early termination of the site agreement or on any other grounds.

S. 215
amended by
No. 67/2010
s. 21.

215 What powers does a court have to award compensation?

If a party to a tenancy agreement or site agreement is convicted of an offence against this Act, the court before which that person is convicted may, on application by the other party to the tenancy agreement or site agreement (as the case requires),

order the first party to pay to the applicant compensation for loss or damage suffered by the applicant because of the commission of that offence.

215A Compensation in relation to closure of caravan park or Part 4A park

**S. 215A
inserted by
No. 45/2018
s. 235.**

- (1) Subject to subsection (3), if a caravan park owner gives a notice to vacate for closure of the caravan park, the caravan park owner must apply to the Tribunal for an order determining compensation for the park closure to be paid by the caravan park owner to eligible residents.
- (2) Subject to subsection (3), if a site owner gives a notice to vacate for closure of the Part 4A park, the site owner must apply to the Tribunal for an order determining compensation for the park closure to be paid by the site owner to eligible site tenants.
- (3) A caravan park owner or a site owner is not required to apply to the Tribunal for an order determining compensation for park closure if—
 - (a) the caravan park owner or site owner is not the owner of the land on which the caravan park or Part 4A park is located; and
 - (b) the closure of the park is due to the expiry of a head lease of that land.
- (4) An application under subsection (1) or (2) must be made within 30 days of the service of the relevant notice to vacate.
- (5) If an application under subsection (1) or (2) for a park closure compensation order is not made within the time set out in subsection (4), the relevant notice to vacate is void and of no effect.

- (6) In this section and section 215B, *notice to vacate* means—
- (a) in relation to a caravan park, a notice to vacate—
 - (i) under section 311A; or
 - (ii) on and from the repeal of Part 6, under section 206AZA; and
 - (b) in relation to a Part 4A park, a notice to vacate—
 - (i) under section 317ZDA; or
 - (ii) on and from the repeal of Part 6, under section 207ZE.

S. 215B
inserted by
No. 45/2018
s. 235.

215B Tribunal may make park closure compensation order

- (1) On an application under section 215A(1) or (2), the Tribunal may make a park closure compensation order if satisfied that—
 - (a) the notice to vacate has been validly given; and
 - (b) in the case of a caravan park closure, the parties entitled to compensation are eligible residents; and
 - (c) in the case of a Part 4A park closure, the parties entitled to compensation are eligible site tenants; and
 - (d) the caravan park owner or site owner is the owner of the land and the closure is not due to the expiry of a head lease.
- (2) In making a park closure compensation order, the Tribunal must consider whether a dwelling to which the order relates—

- (a) is to be relocated by the eligible resident or eligible site tenant; or
 - (b) is not to be, or is unable to be, relocated by the eligible resident or eligible site tenant.
- (3) If a dwelling is to be relocated by an eligible resident or eligible site tenant, the Tribunal, in determining the amount of compensation payable by the caravan park owner or the site owner, is to have regard to the likely cost of the following—
 - (a) removing the dwelling from the site, including disconnection of services;
 - (b) transporting the dwelling and contents to a new site;
 - (c) installation of the dwelling at the new site (which is not to include any costs of landscaping the new site);
 - (d) any other matter the Tribunal considers relevant.
- (4) After a dwelling is relocated by an eligible resident or eligible site tenant, the owner of the dwelling may apply to the Tribunal for an order that the caravan park owner or site owner compensate the owner of the dwelling for any of the following—
 - (a) the cost of any repair or damage to the dwelling resulting from the relocation of the dwelling, other than damage due to the negligence of any person engaged by the owner of the dwelling to dismantle, transport or relocate that dwelling;
 - (b) any reasonable costs that were reasonably incurred as a result of the relocation of the dwelling and its contents.

- (5) On an application under subsection (4), the Tribunal may order that the caravan park owner or the site owner compensate the owner of the dwelling for any costs referred to in subsection (4).
- (6) If a dwelling is not to be relocated or is unable to be relocated by an eligible resident or eligible site tenant, the Tribunal, in determining the amount of compensation payable by the caravan park owner or the site owner, is to have regard to—
 - (a) if the eligible resident or eligible site tenant has agreed to transfer ownership of the dwelling, free of encumbrances, to the caravan park owner or the site owner (as the case requires), the loss of residency, being a reasonable amount calculated having regard to the following—
 - (i) the original purchase price paid for the dwelling by the eligible resident or eligible site tenant;
 - (ii) the current on-site market value of the dwelling determined as if the closure were not to occur;
 - (iii) the rent and any other fees for the site payable by the eligible resident or eligible site tenant;
 - (iv) any other prescribed matter; and
 - (b) the likely reasonable costs of removing the contents from the dwelling and the relocation costs of the eligible resident or eligible site tenant, being a reasonable amount calculated having regard to the following—
 - (i) the costs of removal of the possessions of the eligible resident or eligible site tenant;

- (ii) the likely inconvenience to the eligible resident or eligible site tenant due to having to arrange alternative residential accommodation;
 - (iii) the length of time the eligible resident or eligible site tenant has occupied the site;
 - (iv) any other matter the Tribunal considers relevant.
- (7) A park closure compensation order must specify the date by which the compensation under the order is to be paid to the eligible resident or eligible site tenant (as the case requires) which must not be less than 30 days before the end of the notice period specified in the relevant notice to vacate.
- (8) If a park closure compensation order is made in relation to the relocation of a dwelling and the eligible resident or eligible site tenant (as the case requires) relocates the dwelling before the caravan park owner or the site owner pays the compensation payable under the order, the caravan park owner or the site owner, as the case requires, remains liable to pay the compensation under the order.

Part 6—Termination

Division 1—Termination of residential tenancies

Subdivision 1—When can a tenancy agreement be terminated?

216 Termination of tenancy agreement

Despite any Act or law to the contrary, a tenancy agreement does not terminate and must not be terminated except in accordance with this Division or Part 7 or 8.

217 Termination by agreement

A tenancy agreement may be terminated by agreement of the landlord and tenant.

218 Termination by consent

- (1) A tenancy agreement terminates if the tenant vacates the rented premises with the consent of the landlord.
- (2) The consent, once given, is irrevocable.

219 Termination after notice to vacate

- (1) A tenancy agreement terminates if the landlord or the tenant gives a notice to vacate or a notice of intention to vacate the rented premises under this Division and—
 - (a) the tenant vacates the rented premises on or after the termination date specified in the notice; or
 - (b) the tenancy agreement terminates in accordance with section 334 or 342.
- (2) If a notice to vacate under section 268A or 268B or a notice of intention to vacate under section 235(3) is given in respect of a fixed term tenancy agreement between a rooming house

S. 219
amended by
No. 26/2016
s. 87 (ILA
s. 39B(1)).

S. 219(2)
inserted by
No. 26/2016
s. 87.

owner and a resident of the rooming house, unless it terminates earlier in accordance with this Part, the fixed term tenancy agreement terminates on whichever is the earlier of—

- (a) the termination date specified in the notice to vacate under section 268A or 268B; or
- (b) if a notice of intention to vacate has been given under section 235(3), the termination date specified in that notice of intention to vacate.

Example

Earlier termination may occur by a notice to vacate given under section 243 or 250.

220 Termination by abandonment

A tenancy agreement terminates if the tenant abandons the rented premises.

221 Termination where premises are sub-let

A tenancy agreement terminates if—

- (a) the tenant is not in possession of the rented premises because the tenant has sub-let them; and
- (b) the landlord or tenant gives a notice to vacate or a notice of intention to vacate the rented premises under this Division; and
- (c) the period (if any) between the date on which the notice is given and the termination date specified in the notice has expired.

222 Termination where landlord not owner of premises

A tenancy agreement terminates if the owner of the rented premises gives a notice to vacate in accordance with section 267 and—

- (a) the tenant vacates the rented premises on or after the termination date specified in the notice; or
- (b) the tenancy agreement terminates in accordance with section 334 or 342.

223 Termination by mortgagee

A tenancy agreement terminates if a mortgagee in respect of rented premises gives a notice to vacate under section 268 and—

- (a) the tenant vacates the rented premises on or after the termination date specified in the notice; or
- (b) the tenancy agreement terminates in accordance with section 334.

224 Termination by merger

A tenancy agreement may terminate by merger (that is, where the interests of the landlord and the tenant become vested in one person).

225 Termination by disclaimer

A tenancy agreement may terminate by disclaimer (for example, on repudiation of the agreement by the tenant accepted by the landlord).

226 Termination by tenant before possession

A tenancy agreement terminates if the tenant has not entered into possession of the rented premises and has given a notice of termination of the tenancy agreement to the landlord on the ground that the premises—

- (a) are not in good repair; or
- (b) are unfit for human habitation; or
- (c) are destroyed totally or to such an extent as to be rendered unsafe; or

- (d) are not vacant; or
- (e) are not legally available for use as a residence; or
- (f) are for any other reason unavailable for occupation.

227 Termination by landlord before possession

A tenancy agreement terminates if the tenant has not entered into possession of the rented premises and the landlord has given a notice of termination of the tenancy agreement to the tenant on the ground that the premises—

- (a) are unfit for human habitation; or
- (b) are destroyed totally or to such an extent as to be rendered unsafe.

228 Termination after death of sole tenant

**S. 228
substituted by
No. 45/2002
s. 20.**

- (1) If a tenant dies, the tenancy agreement terminates at the earliest of the following dates—
 - (a) 28 days after the landlord has been given written notice of the death of the tenant by the legal personal representative or next of kin of the tenant; or
 - (b) 28 days after the landlord has given a notice to vacate to the legal personal representative or next of kin of the tenant; or
 - (c) a date agreed in writing between the landlord and the legal personal representative or next of kin of the tenant; or
 - (d) the date determined as the termination date of the tenancy agreement by the Tribunal on the application of the landlord under subsection (2).

- (2) If a landlord is unable to give notice to vacate under subsection (1)(b), the landlord may apply to the Tribunal for an order to terminate the tenancy.
- (3) This section does not apply if there is more than one tenant under the tenancy agreement.

S. 228A
inserted by
No. 26/2016
s. 88.

228A Tenancy agreement—cancellation of licence or failure to renew licence

A tenancy agreement does not terminate merely because—

- (a) an application for a licence, or for a renewal of a licence, to operate a rooming house under the **Rooming House Operators Act 2016** is refused; or
- (b) a licence to operate a rooming house under the **Rooming House Operators Act 2016** expires; or
- (c) the Tribunal cancels a licence to operate a rooming house under the **Rooming House Operators Act 2016**.

Note

See sections 16, 20 and 33(1)(a)(v) of the **Rooming House Operators Act 2016**.

S. 229
substituted by
No. 67/2010
s. 133.

229 Offence to obtain possession etc. of premises

- (1) A landlord or a person acting on behalf of a landlord must not, except in accordance with this Act, require or compel or attempt to compel the tenant under the tenancy agreement to vacate the rented premises.

Penalty: 60 penalty units in the case of a natural person;
300 penalty units in the case of a body corporate.

- (2) A landlord or a person acting on behalf of a landlord must not, except in accordance with this Act, obtain or attempt to obtain possession of the rented premises by entering them, whether the entry is peaceable or not, unless there are reasonable grounds to believe that the tenant has abandoned the premises.

Penalty: 60 penalty units in the case of a natural person;
300 penalty units in the case of a body corporate.

Subdivision 2—Variations or creations of tenancy

230 Creation of periodic tenancy

- (1) A tenant is deemed to occupy rented premises under a periodic tenancy agreement if—
- (a) the term of a fixed term tenancy agreement to which this Act applies ends; and
 - (b) the tenant under that agreement continues in occupation of the rented premises—
 - (i) otherwise than as a tenant under a fixed term tenancy agreement; or
 - (ii) in the case of a fixed term tenancy agreement for more than 5 years, otherwise than in accordance with a term in the agreement permitting the extension of the term of that tenancy at the end of the fixed term.
- (2) The rental period under the periodic tenancy agreement created by subsection (1) is—
- (a) if the rental period under the fixed term tenancy agreement was more than 1 month, a monthly period; and

S. 230(1)(b)
substituted by
No. 40/2018
s. 15(1).

S. 230(3)
amended by
No. 40/2018
s. 15(2).

(b) if the rental period under the fixed term tenancy agreement was 1 month or less, a period equivalent to that rental period.

(3) Except as provided in subsection (2), in the case of a tenancy agreement for a fixed term not exceeding 5 years, the periodic tenancy agreement is on the same terms, so far as applicable, as the terms of the fixed term tenancy agreement.

S. 230(3A)
inserted by
No. 40/2018
s. 15(3).

(3A) Except as provided in subsection (2), in the case of a tenancy agreement for a fixed term of more than 5 years, the periodic tenancy agreement is on the same terms, so far as applicable, as the terms of a standard form tenancy agreement for a fixed term not exceeding 5 years.

(4) On the application of the landlord or the tenant, the Tribunal may make any variations to the terms of a periodic tenancy agreement created under this section that are necessary for or appropriate to the continuation of the agreement.

231 New tenancy created where head tenancy terminated

- (1) A person becomes the tenant of the landlord in respect of rented premises if—
- (a) the person is in possession of the premises under a tenancy agreement (a ***sub-tenancy agreement***) granted to him or her by a person who is a tenant of the premises under another tenancy agreement (the ***head tenancy agreement***) granted to him or her by the landlord; and
 - (b) the head tenancy agreement terminates or is terminated; and
 - (c) the sub-tenancy agreement does not terminate or is not terminated in accordance with this Act.

- (2) The tenancy created under subsection (1) is deemed to be under a tenancy agreement on the same terms, as far as applicable, as the terms of the sub-tenancy agreement.
- (3) Subsection (1) applies whether or not this Act applied at any time to the head tenancy agreement.

232 Application to Tribunal for creation of tenancy agreement

- (1) A person who has been residing in rented premises as his or her principal place of residence and who is not a party to a tenancy agreement applying to those premises may apply to the Tribunal for an order requiring the landlord of the premises to enter into a tenancy agreement with the person if—
 - (a) an application for a possession order for the premises has been made under Part 7; or
 - (b) the tenant has abandoned the rented premises; or
 - (c) the tenant has delivered up vacant possession of the rented premises; or
 - (d) the tenant has given a notice of intention to vacate the rented premises; or
 - (e) the tenant has died and there is no surviving tenant.

S. 232(1)(d)
amended by
No. 45/2002
s. 21(1).

S. 232(1)(e)
inserted by
No. 45/2002
s. 21(2).

* * * * *

S. 232(2)
repealed by
No. 52/1998
s. 236(k).

- (3) This section does not apply to a person who becomes a tenant of a landlord under section 231.

233 Order of Tribunal

- (1) The Tribunal may make an order requiring the landlord to enter into a tenancy agreement with the applicant under section 232 if the Tribunal is satisfied that—
 - (a) the applicant could reasonably be expected to comply with the duties of a tenant under a tenancy agreement to which this Act applies; and
 - (b) the applicant would be likely to suffer severe hardship if he or she were compelled to leave the premises; and
 - (c) the hardship suffered by the applicant would be greater than any hardship that the landlord would suffer if the order were made.
- (2) The tenancy agreement must—
 - (a) be entered into before the end of the time stated in the order; and
 - (b) be on the same terms and conditions as the tenancy agreement in force in respect of the rented premises before the order is made, subject to any changes that the Tribunal determines.

S. 233A
inserted by
No. 52/2008
s. 262.

233A Application for new tenancy agreement because of final family violence intervention order

S. 233A(1)
substituted by
No. 53/2010
s. 221(Sch.
item 9.5).

- (1) In this section—

S. 233A(1) def.
of *final order*
amended by
No. 53/2016
s. 118.

final order means—

- (a) a final order within the meaning of the **Family Violence Protection Act 2008**;
or

- (ab) a non-local DVO made by a court—
 - (i) that is a recognised DVO; and
 - (ii) that is a final order, within the meaning of the **National Domestic Violence Order Scheme Act 2016**; or
 - (b) a final order within the meaning of the **Personal Safety Intervention Orders Act 2010**.
- (2) This section applies if—
- (a) a tenant is excluded from rented premises under an exclusion condition included in a final order; and
 - (b) a protected person under the final order—
 - (i) is also a party to the tenancy agreement for the rented premises; or
 - (ii) has been residing in the rented premises as the protected person's principal place of residence but is not a party to the tenancy agreement.
- (3) The protected person may apply to the Tribunal for an order—
- (a) terminating the existing tenancy agreement; and
 - (b) requiring the landlord of the premises to enter into a tenancy agreement with the protected person and other persons (if any) specified in the application.
- (4) For the purposes of proceedings in relation to an application for an order under subsection (3), each of the following persons is a party to the proceeding—
- (a) the protected person;

- (b) the landlord;
- (c) the excluded tenant;
- (d) any other existing tenants.

S. 233B
inserted by
No. 52/2008
s. 262.

233B Tribunal orders for application made under section 233A(3)

- (1) On receipt of an application under section 233A(3), the Tribunal may make an order terminating the existing tenancy agreement and requiring the landlord to enter into a new tenancy agreement with the protected person and other persons (if any) specified in the application if the Tribunal is satisfied that—
 - (a) the protected person and other persons (if any) could reasonably be expected to comply with the duties of a tenant under a tenancy agreement to which this Act applies; and
 - (b) the protected person or the protected person's dependent children would be likely to suffer severe hardship if the protected person were compelled to leave the premises; and
 - (c) the hardship suffered by the protected person would be greater than any hardship the landlord would suffer if the order were made; and
 - (d) it is reasonable to do so given the length of the exclusion under the final order and the length of the existing tenancy agreement; and
 - (e) it is reasonable to do so given the interests of any other tenants (other than the excluded tenant) under the existing tenancy agreement and, in particular, whether the other tenants support the protected person's application.

- (2) If the Tribunal makes an order under subsection (1) the new tenancy agreement must—
 - (a) be subject to the same rent and frequency of rent payments as the existing tenancy agreement; and
 - (b) if the existing tenancy agreement is a fixed term agreement, run for a term not longer than the remainder of that fixed term; and
 - (c) otherwise, be on the same terms and conditions as the existing tenancy agreement, subject to any changes the Tribunal determines.
- (3) If the Tribunal makes an order under subsection (1) the existing tenancy agreement is terminated on the signing of the new tenancy agreement.

233C Tribunal may determine parties' liability under terminated tenancy agreement

S. 233C
inserted by
No. 52/2008
s. 262.

- (1) If the Tribunal decides to make an order under section 233B, the Tribunal may determine the liabilities of the excluded tenant, the protected person or any other tenants under the existing tenancy agreement in relation to a bond paid for the rented premises and any other existing liabilities under the existing tenancy agreement, including, for example—
 - (a) liabilities relating to damage caused to the rented premises; and
 - (b) liabilities relating to outstanding utility charges.
- (2) To remove doubt, the termination of a tenancy agreement under section 233B does not give rise to a right to claim compensation on the part of any party to the agreement for early termination of the agreement.

- (3) For the purpose of making a determination under subsection (1), the Tribunal may adjourn the hearing to allow an inspection of the rented premises in accordance with section 86(1)(g).

S. 233D
inserted by
No. 52/2008
s. 262.

233D Cross-examination in proceedings for a new tenancy agreement

S. 233D(1)
amended by
Nos 53/2010
s. 221(Sch.
item 9.6),
53/2016 s. 119.

- (1) In a hearing for proceedings arising out of, or relating to, an application under section 233A(3) by a protected person under a final family violence intervention order or a final non-local DVO that is a recognised DVO an excluded tenant must not personally cross-examine a protected person without leave of the Tribunal.
- (2) The Tribunal may grant leave under subsection (1) with or without conditions.
- (3) If leave is granted under subsection (1), the excluded tenant may only cross-examine the protected person—
- (a) as to those matters set out in section 233(1) and 233B(1); and
 - (b) in accordance with any conditions to which the leave granted is subject.

234 Reduction of fixed term tenancy agreement

- (1) On the application of a party to a fixed term tenancy agreement, the Tribunal may make an order—
- (a) reducing the term of the agreement by a period stated in the order; and
 - (b) making any variations to the terms of the agreement that are necessary because of the reduction of the term.

(2) The Tribunal may only make an order under this section if it is satisfied that, because of an unforeseen change in the applicant's circumstances, the severe hardship which the applicant would suffer if the term of the agreement were not reduced would be greater than the hardship which the other party would suffer if the term were reduced.

(2A) Without limiting subsection (2), the Tribunal may be satisfied the applicant has experienced an unforeseen change in the applicant's circumstances that will cause the applicant to suffer severe hardship for the purposes of that subsection if—

S. 234(2A)
inserted by
No. 52/2008
s. 263.

(a) the applicant is a tenant under the fixed term tenancy agreement; and

(b) the applicant—

(i) is excluded from the rented premises the subject of the agreement under a family violence intervention order, non-local DVO made by a court that is a recognised DVO or personal safety intervention order; or

S. 234(2A)
(b)(i)
amended by
Nos 53/2010
s. 221(Sch.
item 9.7),
53/2016 s. 120.

(ii) is a protected person under a family violence intervention order, non-local DVO made by a court that is a recognised DVO or personal safety intervention order and is seeking to reduce the term of the agreement to protect their own safety or the safety of their children.

S. 234(2A)
(b)(ii)
amended by
Nos 53/2010
s. 221(Sch.
item 9.7),
53/2016 s. 120.

(3) In making an order under this section, the Tribunal may determine the compensation (if any) to be paid by the applicant for the order to the other party because of the reduction in the term of the tenancy agreement.

Pt 6 Div. 1
Subdiv. 2A
(Heading and
ss 234A,
234B)
inserted by
No. 19/2019
s. 147.

Subdivision 2A—Termination of tenancy agreement because of coercion or deception of SDA resident

S. 234A
inserted by
No. 19/2019
s. 147.

234A Application for termination of tenancy agreement because of coercion or deception of SDA resident

- (1) An SDA resident who is party to a tenancy agreement may apply to the Tribunal for any of the following orders on a ground specified in subsection (2)—
 - (a) an order terminating the existing tenancy agreement;
 - (b) an order—
 - (i) terminating the existing tenancy agreement; and
 - (ii) requiring the SDA provider who is a landlord to enter a new tenancy agreement with the person who is an SDA resident and other persons (if any) specified in the application;
 - (c) if all the tenants under the existing tenancy agreement are SDA residents, an order—
 - (i) terminating the tenancy agreement; and
 - (ii) requiring the SDA provider who is a landlord to enter into, or establish, an SDA residency agreement with each person who is a tenant under the existing tenancy agreement.
- (2) The following grounds are specified for the purposes of subsection (1)—
 - (a) the SDA resident was coerced or deceived into entering into the tenancy agreement;

- (b) the SDA resident did not receive an information statement as required under section 498D before entering into the tenancy agreement;
 - (c) the SDA resident was given an information statement under section 498D but did not receive an explanation of that statement under section 498E.
- (3) For the purposes of a proceeding for an order under subsection (1), each of the following persons is a party to the proceeding—
- (a) the SDA resident or one of the following persons who may make an application on behalf of the SDA resident—
 - (i) the Director;
 - (ii) the SDA resident's guardian (if any);
 - (iii) the SDA resident's administrator (if any);
 - (iv) the Public Advocate;
 - (b) the SDA provider;
 - (c) any other party to the existing tenancy agreement;
 - (d) any other person specified in the application as a party.
- (4) An application under subsection (1) may be made without the consent of the SDA provider or any other party to the existing tenancy agreement.
- (5) The Tribunal must hear an application under subsection (1)—
- (a) within 3 business days of the application being made; or

- (b) if the application cannot be heard within the period referred to in paragraph (a), no later than the next available sitting day of the Tribunal after the end of that 3 business day period.
- (6) If an application is made under subsection (1), unless the Tribunal otherwise orders, any other action that could otherwise be taken in respect of the existing tenancy agreement is stayed until the Tribunal determines the application.

S. 234B
inserted by
No. 19/2019
s. 147.

234B Tribunal orders

- (1) On an application under section 234A(1), the Tribunal may—
 - (a) order the dismissal of the application; or
 - (b) if satisfied that the SDA resident was coerced or deceived into entering a tenancy agreement or that the SDA resident did not receive an information statement under section 498D or an explanation of the information statement under section 498E—
 - (i) order the termination of the existing tenancy agreement; or
 - (ii) order the termination of the existing tenancy agreement and that the SDA provider enter into a new tenancy agreement with the SDA resident and other persons (if any) specified in the application; or
 - (iii) if all tenants to the agreement are SDA residents, order the termination of the existing tenancy agreement and require the SDA provider to enter into or establish an SDA residency agreement with each SDA resident.

- (2) If the Tribunal makes an order under subsection (1)(b), the Tribunal must specify the date on which the existing tenancy agreement terminates.
- (3) For the purposes of subsection (1)(b), the Tribunal may—
 - (a) adjourn the application to determine a termination date in consultation with the tenants party to the existing tenancy agreement; or
 - (b) adjourn the application to allow the parties to the existing tenancy agreement to enter into a new tenancy agreement or to enter into, or establish, one or more SDA residency agreements (as appropriate); or
 - (c) if, during an adjournment the parties to the existing tenancy agreement are—
 - (i) unable to enter into a new tenancy agreement, direct the parties to enter into a new tenancy agreement on terms declared by the Tribunal; or
 - (ii) unable to enter into, or establish, one or multiple SDA residency agreements (as appropriate), direct the parties to enter into one or multiple new SDA residency agreements (as appropriate) on terms declared by the Tribunal.
- (4) If the Tribunal makes an order under subsection (1)(b), having regard to any financial disadvantage suffered by the tenant and regardless of any loss or damage suffered by the SDA provider, the Tribunal may—
 - (a) order that any bond paid by the tenant under the existing tenancy agreement be paid out by the Authority to the tenant and, if there is more than one tenant under the existing tenancy agreement, apportion the bond to be

- paid out by the Authority between the tenants; and
- (b) revoke any compensation orders that have been issued against the tenant.
- (5) In determining an application under section 234A(1), the Tribunal may take into account the Director's guidelines.

Subdivision 3—Notice or abandonment by tenant

235 Notice of intention to vacate

S. 235(2)
amended by
No. 26/2016
s. 89(1).

S. 235(3)
inserted by
No. 26/2016
s. 89(2).

S. 235(4)
inserted by
No. 26/2016
s. 89(2).

- (1) A tenant may give a landlord a notice of intention to vacate rented premises.
- (2) The notice under subsection (1) must specify a termination date that is not less than 28 days after the date on which the notice is given.
- (3) A resident of a rooming house who has entered into a tenancy agreement with a rooming house owner which is a fixed term tenancy agreement may give the rooming house owner a notice of intention to vacate the room or rented premises if the resident has been given a notice to vacate under section 268A or 268B.
- (4) The notice of intention to vacate under subsection (3) must specify a termination date that is not less than 28 days after the date on which that notice of intention to vacate is given.

S. 236
amended by
No. 26/2016
s. 90 (ILA
s. 39B(1)).

236 Notice to have no effect in certain circumstances

- (1) A notice given under section 235 in respect of a fixed term tenancy agreement is of no effect—
- (a) if the agreement includes a provision enabling the landlord or the tenant to determine the agreement by notice (otherwise than on the grounds of a breach of the agreement) if—

- (i) the period after the giving of the notice and before the termination date specified in the notice is less than the period of notice required under that provision; or
 - (ii) the termination date specified in the notice is a date other than a date on which under that provision the agreement may be determined; or
 - (b) in any other case, if it specifies a termination date that is earlier than the end of the term of the tenancy agreement.
- (2) This section does not apply to a notice of intention to vacate given under section 235(3).

S. 236(2)
inserted by
No. 26/2016
s. 90.

237 Reduced period of notice of intention to vacate in certain circumstances

- (1) This section applies to a tenant if—
- (a) the tenant has been given a notice to vacate under section 255, 256, 257, 258, 259, 260, 262 or 263; or
 - (b) the tenant requires special or personal care and needs to vacate the rented premises in order to obtain that care; or
 - (c) the tenant has received a written offer of public housing from the Director of Housing; or
 - (d) the tenant requires temporary crisis accommodation and needs to vacate the rented premises in order to obtain that accommodation; or
 - (e) the tenant, who is an SDA resident, has been given a notice under section 498DA.

S. 237(1)(c)
amended by
No. 45/2002
s. 59(a).

S. 237(1)(d)
inserted by
No. 45/2002
s. 59(b),
amended by
No. 19/2019
s. 148(1)(a).

S. 237(1)(e)
inserted by
No. 19/2019
s. 148(1)(b).

S. 237(3A)
inserted by
No. 19/2019
s. 148(2).

- (2) A tenant to whom this section applies may give a landlord a notice of intention to vacate rented premises under a fixed term tenancy agreement specifying a termination date that is on or after the end of the term of the tenancy agreement if the period between the date on which the notice is given and the termination date is not less than 14 days.
- (3) A tenant to whom this section applies may give a landlord a notice of intention to vacate rented premises under a periodic tenancy specifying a termination date that is not less than 14 days after the date on which the notice is given.
- (3A) A tenant to whom subsection (1)(e) applies may give a landlord who is, or was, an SDA provider, a notice of intention to vacate a premises that is, or was, an SDA enrolled dwelling, specifying a termination date that is not less than 14 days after the date on which the notice is given.
- (4) In this section *special or personal care* means—
 - (a) assistance with one or more of the following—
 - (i) bathing, showering or personal hygiene;
 - (ii) toileting;
 - (iii) dressing or undressing;
 - (iv) meals; or
 - (b) physical assistance for persons with mobility problems; or
 - (c) assistance for persons who are mobile but require some form of supervision or assistance; or
 - (d) assistance or supervision in dispensing medicine; or

- (e) the provision of substantial emotional support in a health or residential service.

237A Tenancy agreement for a fixed term of more than 5 years does not comply with standard form

S. 237A
inserted by
No. 40/2018
s. 16.

- (1) This section applies if a tenancy agreement for a fixed term of more than 5 years does not comply with section 26(1A).
- (2) Despite any term of the tenancy agreement to the contrary, the tenant may give the landlord a notice of intention to vacate the rented premises.
- (3) The notice under subsection (2) must specify a termination date that is not less than 28 days after the date on which the notice is given.

238 Premises destroyed or unfit for habitation

- (1) A tenant may give a landlord a notice of intention to vacate rented premises if the premises—
 - (a) are unfit for human habitation; or
 - (b) have been destroyed totally or to such an extent as to be rendered unsafe.
- (2) The notice may specify a termination date that is the date on which the notice is given or a later date.

239 Failure of landlord to comply with Tribunal order

- (1) A tenant may give a landlord a notice of intention to vacate rented premises if the landlord fails to comply with an order of the Tribunal under section 212.
- (2) The notice must specify a termination date that is not less than 14 days after the date on which the notice is given.

240 Successive breaches by landlord

S. 240(1)
amended by
No. 47/2012
s. 3(1)(a).

- (1) A tenant under a fixed-term tenancy agreement may give a landlord a notice of intention to vacate rented premises without first serving a breach of duty notice under section 208 if—
- (a) the landlord has breached a duty provision within the meaning of Part 5; and
 - (b) on 2 previous occasions the landlord has been in breach of the same provision; and
 - (c) the tenant or the tenant's agent has on each occasion referred to in paragraph (b) given a breach of duty notice to the landlord under section 208.

S. 240(1)(c)
amended by
Nos 45/2002
s. 89(1)(a),
47/2012
s. 3(1)(b).

S. 240(1)(d)
repealed by
No. 45/2002
s. 89(1)(b).

* * * * *

S. 240(1A)
inserted by
No. 47/2012
s. 3(2).

- (1A) If the tenant gives a breach of duty notice to the landlord under section 208 in respect of the breach referred to in subsection (1)(a), the tenant must not give the landlord a notice of intention to vacate under this section unless the landlord has not complied with the breach of duty notice within the required time.
- (2) The notice must specify a termination date that is not less than 14 days after the date on which the notice is given.

241 Order of Tribunal that premises are abandoned

S. 241(2)
amended by
No. 45/2002
s. 80.

- (1) If a landlord believes that a tenant has abandoned rented premises, the landlord may apply to the Tribunal for an order declaring that the tenant has abandoned them.
- (2) An application under subsection (1) must be heard by the Tribunal within 5 business days after the application is made.

- (3) On an application under subsection (1), the Tribunal may by order declare that the rented premises were abandoned by the tenant on a day specified by the Tribunal.
- (4) The tenant is deemed to have abandoned the rented premises on that specified day.

242 Abandoned premises and rent in advance

- (1) If a tenant abandons rented premises and the landlord has received an amount of rent in respect of the premises that had not accrued due when the tenant abandoned them, the landlord is entitled to the lesser of—
 - (a) that amount; or
 - (b) such part of that amount as does not exceed the amount of loss or damage suffered as a result of the abandonment.
- (2) If the landlord knows the address of the tenant, the landlord must pay to the tenant the amount of rent to which the landlord is not entitled.
- (3) If the landlord does not know the address of the tenant, the amount to which the landlord is not entitled must be dealt with in accordance with Part 3 of the **Unclaimed Money Act 2008** as if the landlord were a business to which that Part applies.

S. 242(3)
amended by
No. 44/2008
s. 114(1).

Subdivision 4—Notice by landlord, owner or mortgagee

243 Damage

- (1) A landlord may give a tenant a notice to vacate rented premises if by the conduct (by act or omission) of the tenant or the tenant's visitor damage is maliciously caused to the premises or common areas.

- (2) The notice may specify a termination date that is the date on which the notice is given or a later date.

244 Danger

- (1) A landlord may give a tenant a notice to vacate rented premises if the tenant or the tenant's visitor by act or omission endangers the safety of occupiers of neighbouring premises.
- (2) The notice may specify a termination date that is the date on which the notice is given or a later date.
- (3) A landlord is not entitled to give a notice to vacate under subsection (1) if a notice to leave under section 368 has been given in respect of that act or omission.

S. 244(3)
substituted by
No. 45/2002
s. 22.

245 Condition of premises

- (1) A landlord may give a tenant a notice to vacate rented premises if the premises—
- (a) are unfit for human habitation; or
 - (b) have been destroyed totally or to such an extent as to be rendered unsafe.
- (2) The notice may specify a termination date that is the date on which the notice is given or a later date.

246 Non-payment of rent

- (1) A landlord may give a tenant a notice to vacate rented premises if the tenant owes at least 14 days rent to the landlord.
- (2) The notice must specify a termination date that is not less than 14 days after the date on which the notice is given.

247 Failure to pay bond

- (1) The landlord may give the tenant a notice to vacate rented premises if the tenant fails to comply with a provision of the tenancy agreement relating to the payment of a bond.
- (2) The notice must specify a termination date that is not less than 14 days after the date on which the notice is given.

248 Failure to comply with Tribunal order

- (1) A landlord may give a tenant a notice to vacate rented premises if the tenant fails to comply with an order of the Tribunal under section 212.
- (2) The notice must specify a termination date that is not less than 14 days after the date on which the notice is given.

249 Successive breaches by tenant

- (1) A landlord may give a tenant a notice to vacate rented premises without first serving a breach of duty notice under section 208 if—
 - (a) the tenant has breached a duty provision within the meaning of Part 5; and
 - (b) on 2 previous occasions the tenant has been in breach of the same provision; and
 - (c) the landlord or the landlord's agent has on each occasion referred to in paragraph (b) given a breach of duty notice to the tenant under section 208.

* * * * *

- (1A) If the landlord gives a breach of duty notice to the tenant under section 208 in respect of the breach referred to in subsection (1)(a), the landlord must not give the tenant a notice to vacate under this

S. 249(1)
amended by
No. 47/2012
s. 4(1)(a).

S. 249(1)(c)
amended by
Nos 45/2002
s. 89(2)(a),
47/2012
s. 4(1)(b).

S. 249(1)(d)
repealed by
No. 45/2002
s. 89(2)(b).

S. 249(1A)
inserted by
No. 47/2012
s. 4(2).

section unless the tenant has not complied with the breach of duty notice within the required time.

- (2) The notice must specify a termination date that is not less than 14 days after the date on which the notice is given.

250 Use of premises for illegal purpose

- (1) A landlord may give a tenant a notice to vacate rented premises if the tenant has used the rented premises or permitted their use for any purpose that is illegal at common law or under an Act.
- (2) The notice must specify a termination date that is not less than 14 days after the date on which the notice is given.

S. 250A
inserted by
No. 18/2011
s. 3.

250A Drug-related conduct in public housing

- (1) The Director of Housing may give a tenant a notice to vacate rented premises of which the Director of Housing is the landlord if the tenant has, on the rented premises or in a common area, illegally—
 - (a) trafficked or attempted to traffick a drug of dependence; or
 - (b) supplied a drug of dependence to a person under 18 years of age; or
 - (c) possessed a preparatory item with the intention of using the item for the purpose of trafficking in a drug of dependence; or
 - (d) possessed, without lawful excuse—
 - (i) a tablet press; or
 - (ii) a precursor chemical; or
- (da) intentionally caused another person to traffick in a drug of dependence by threatening to harm that person or another

S. 250A(1)(da)
inserted by
No. 2/2016
s. 18(1).

- person or by using violence against that person or another person; or
- (db) intentionally permitted another person to use those premises or the common area for—
- (i) trafficking in a drug of dependence; or
 - (ii) cultivating a drug of dependence; or
- (e) cultivated or attempted to cultivate a narcotic plant.
- (2) The notice must specify a termination date that is not less than 14 days after the date on which the notice is given.
- (3) In this section—

S. 250A(1)(db)
inserted by
No. 2/2016
s. 18(1).

cultivate, narcotic plant and *traffick* have the same meanings as in section 70(1) of the **Drugs, Poisons and Controlled Substances Act 1981**;

drug of dependence, substance and *supply* have the same meanings as in section 4(1) of the **Drugs, Poisons and Controlled Substances Act 1981**;

precursor chemical means a prescribed precursor chemical within the meaning of section 71D of the **Drugs, Poisons and Controlled Substances Act 1981**;

preparatory item means a substance, material, equipment or document containing instructions relating to the preparation, cultivation or trafficking of a drug of dependence.

S. 250A(3) def.
of *preparatory item*
amended by
No. 2/2016
s. 18(2).

250B Prescribed indictable offences in public housing

- (1) The Director of Housing may give a tenant a notice to vacate rented premises of which the Director of Housing is the landlord if the tenant

S. 250B
inserted by
No. 18/2011
s. 3.

has committed a prescribed indictable offence on the rented premises or in a common area.

- (2) The notice must specify a termination date that is not less than 14 days after the date on which the notice is given.
- (3) To avoid doubt, nothing in this section is to be taken to mean that the Director of Housing may only give a tenant a notice to vacate in respect of a prescribed indictable offence if the tenant has been convicted or found guilty of that offence.

251 Permitting child to reside in premises

- (1) A landlord may give a tenant a notice to vacate rented premises if the tenant has failed to comply with a term of the tenancy agreement prohibiting the tenant from permitting a child under the age of 16 years to reside on the rented premises.
- (2) The notice must specify a termination date that is not less than 14 days after the date on which the notice is given.

252 False statement to housing authority

- (1) A landlord which is a public statutory authority engaged in the provision of housing may give a tenant a notice to vacate rented premises if the authority was induced to enter the tenancy agreement by a statement by the tenant—
 - (a) which related to a matter on which eligibility to rent the premises depended; and
 - (b) which the tenant knew to be false or misleading.
- (2) The notice must specify a termination date that is not less than 14 days after the date on which the notice is given.

253 Assignment or sub-letting without consent

- (1) A landlord may give a tenant a notice to vacate rented premises if the tenant has assigned or sub-let or purported to assign or sub-let the whole or any part of the premises without the landlord's consent.
- (2) The notice must specify a termination date that is not less than 14 days after the date on which the notice is given.

254 Landlord's principal place of residence (fixed term tenancy)

- (1) A landlord under a fixed term tenancy agreement may, before the end of the term of the tenancy agreement, give the tenant a notice to vacate rented premises if—
 - (a) the rented premises were the landlord's principal place of residence—
 - (i) immediately before the tenancy agreement was entered into; or
 - (ii) if the tenancy agreement is the second tenancy agreement entered into since the premises were the landlord's principal place of residence, immediately before the first tenancy agreement was entered into; and
 - (b) the tenancy agreement states that the rented premises were the landlord's principal place of residence—
 - (i) immediately before the tenancy agreement was entered into; or
 - (ii) if the tenancy agreement is the second tenancy agreement entered into since the premises were the landlord's principal place of residence,

S. 254(1)
substituted by
No. 45/2002
s. 23(1).

immediately before the first tenancy agreement was entered into; and

- (c) the tenancy agreement states that the landlord intends to resume occupancy of the premises on the termination of the agreement.
- (2) The notice may specify a termination date that is the date of the end of the term or a later date.
- (3) The notice must specify a termination date that is not less than 14 days after the date on which the notice is given.
- (4) A landlord is not entitled to give a notice under this section if the landlord has entered into more than 2 tenancy agreements in respect of the premises since the premises were the landlord's principal place of residence.

S. 254(4)
inserted by
No. 45/2002
s. 23(2).

255 Repairs

- (1) A landlord may give a tenant a notice to vacate rented premises if—
 - (a) the landlord intends to repair, renovate or reconstruct the premises—
 - (i) in the case of a building owned by a landlord containing 5 or more rented premises, immediately after the last tenant vacates; or
 - (ii) in any other case, immediately after the termination date; and
 - (b) the landlord has obtained all necessary permits and consents to carry out the work; and
 - (c) the work cannot be properly carried out unless the tenant vacates the rented premises.

- (2) The notice must specify a termination date that is not less than 60 days after the date on which the notice is given.

256 Demolition

- (1) A landlord may give a tenant a notice to vacate rented premises if—
- (a) the landlord intends to demolish the premises—
 - (i) in the case of a building owned by a landlord containing 5 or more rented premises, immediately after the last tenant vacates; or
 - (ii) in any other case, immediately after the termination date; and
 - (b) the landlord has obtained all necessary permits and consents to demolish the premises.
- (2) The notice must specify a termination date that is not less than 60 days after the date on which the notice is given.

257 Premises to be used for business

- (1) A landlord may give a tenant a notice to vacate rented premises if the premises are immediately after the termination date to be used for the purposes of a business or for any purpose other than letting for use principally as a residence.
- (2) The notice must specify a termination date that is not less than 60 days after the date on which the notice is given.

258 Premises to be occupied by landlord or landlord's family

- (1) A landlord may give a tenant a notice to vacate rented premises if the premises are immediately after the termination date to be occupied—

S. 258(1)(b)(i)
amended by
No. 27/2001
s. 3(Sch. 1
item 10.3(a)
(b)).

- (a) by the landlord; or
- (b) in the case of a landlord who is an individual—
 - (i) by the landlord's partner, son, daughter, parent or partner's parent; or
 - (ii) by another person who normally lives with the landlord and is wholly or substantially dependent on the landlord.
- (2) The notice must specify a termination date that is not less than 60 days after the date on which the notice is given.

259 Premises to be sold

S. 259(2)
substituted by
No. 45/2002
s. 24.

S. 259(2A)
inserted by
No. 45/2002
s. 24.

- (1) A landlord may give a tenant a notice to vacate rented premises if the premises are immediately after the termination date to be sold or offered for sale with vacant possession.
- (2) If a landlord has entered into a contract of sale of the rented premises and the contract of sale is subject to one or more conditions which, if not satisfied, entitle a party to the contract to terminate the contract, the landlord may, within 14 days after the last of those conditions is satisfied, give a tenant a notice to vacate the rented premises.
- (2A) If a landlord has entered into a contract of sale of the rented premises which is not a contract of sale of the kind referred to in subsection (2), the landlord may, within 14 days after the contract of sale is entered into, give a tenant a notice to vacate the rented premises.

- (3) A notice under this section must specify a termination date that is not less than 60 days after the date on which the notice is given.

260 Premises required for public purposes

- (1) A landlord may give a tenant a notice to vacate rented premises if the premises are the property of a public statutory authority authorised to acquire land compulsorily for its purposes and immediately after the termination date the premises are required for public purposes.
- (2) The notice must specify a termination date that is not less than 60 days after the date on which the notice is given.

261 End of fixed term tenancy

- (1) A landlord under a fixed term tenancy agreement may, before the end of the term of the tenancy agreement, give the tenant a notice to vacate the rented premises at the end of the fixed term.
- (2) The notice must specify a termination date that is the date of the end of the term.
- (3) The notice must be given—
- (a) in the case of a fixed term tenancy agreement for more than 5 years, not less than—
 - (i) the prescribed period before the end of the fixed term; or
 - (ii) if no period has been prescribed under paragraph (i), 90 days before the end of the fixed term; or
 - (b) in the case of a fixed term tenancy agreement for 6 months or more (but not exceeding 5 years), not less than 90 days before the end of the fixed term; or

S. 261(3)
substituted by
No. 40/2018
s. 17.

- (c) in the case of a fixed term tenancy agreement for less than 6 months, not less than 60 days before the end of the fixed term.

262 Tenant no longer meets eligibility criteria

- (1) A landlord which is a public statutory authority engaged in the provision of housing may give a tenant a notice to vacate rented premises if—
 - (a) the rented premises are premises only available to be let to persons who meet the eligibility criteria for housing published by the public statutory authority under subsection (3); and
 - (b) the tenant ceases to meet one or more of the eligibility criteria.
- (2) The notice must specify a termination date that is not less than 90 days after the date on which the notice is given.
- (3) A public statutory authority, by notice published in the Government Gazette, may publish its criteria for eligibility for the provision of housing by that public statutory authority.

S. 262AA
inserted by
No. 47/2019
s. 48.

262AA Notice to vacate when pet kept without consent

- (1) A landlord may give a tenant a notice to vacate rented premises if—
 - (a) the Tribunal has made an order under section 71E excluding a pet from the rented premises; and
 - (b) at least 14 days have passed since the order took effect; and
 - (c) the tenant has not complied with the order.
- (2) The notice must specify a date that is not less than 28 days after the day on which the notice is given.

262A Tenant in transitional housing refuses alternative accommodation

S. 262A
inserted by
No. 45/2002
s. 25.

- (1) A landlord which is the Director of Housing or a delegate of the Director of Housing may give a tenant a notice to vacate rented premises if—
 - (a) the rented premises were provided as transitional housing; and
 - (b) the Director of Housing, under this section, has published requirements for tenants of transitional housing to seek alternative accommodation; and
 - (c) the tenant has—
 - (i) unreasonably refused to seek alternative accommodation in accordance with those requirements; or
 - (ii) refused a reasonable offer of alternative accommodation made in accordance with those requirements.
- (2) The notice must specify a termination date that is not less than 30 days after the date on which the notice is given.
- (3) In this section *transitional housing* means accommodation for a period of more than 14 days and less than 12 months provided to persons in crisis as a result of homelessness or impending homelessness.
- (4) The Director of Housing, by notice published in the Government Gazette, may publish its requirements for tenants of transitional housing to seek alternative accommodation.

263 Notice to vacate for no specified reason

- (1) A landlord may give a tenant a notice to vacate rented premises without specifying a reason for the giving of the notice.

S. 263(2)
amended by
No. 45/2002
s. 26(1),
substituted by
No. 40/2018
s. 18.

- (2) The notice must specify a termination date that is—
- (a) in the case of a tenancy agreement for a fixed term of more than 5 years, not less than—
 - (i) the prescribed period; or
 - (ii) if no period is prescribed under subparagraph (i), 120 days after the date on which the notice is given; or
 - (b) in the case of a periodic tenancy agreement referred to in section 230(3A), not less than—
 - (i) the prescribed period; or
 - (ii) if no period is prescribed under subparagraph (i), 120 days after the date on which the notice is given; or
 - (c) for any other tenancy agreement, not less than 120 days after the date on which the notice is given.

264 Prohibition on letting premises after notice

S. 264(1)
amended by
No. 67/2010
s. 134.

- (1) A landlord or a person acting on behalf of a landlord who obtains possession of rented premises in respect of which a notice to vacate has been given under sections 256 to 259 must not let the premises to a person for use primarily as a residence before the end of 6 months after the date on which the notice was given.

Penalty: 60 penalty units in the case of a natural person;
300 penalty units in the case of a body corporate.

- (2) Subsection (1) does not apply—
- (a) to the letting of the premises to a person referred to in section 258; or

- (b) if the Tribunal determines that the premises may be let.

265 Effect of excessive rent order on notice to vacate

- (1) A landlord is not entitled to give a notice under section 263 in respect of rented premises if an order is in force under section 47 in respect of those premises.
- (2) If—
- (a) a landlord gives a notice under section 263; and
 - (b) before the termination date specified in the notice, an order in respect of the premises is made under section 47—

the notice is invalid as from the date on which the order is made.

266 Notice to have no effect in certain circumstances

- (1) A notice given under sections 255, 256, 257, 258, 259, 260, 261, 262 and 263 in respect of a fixed term tenancy agreement is of no effect—
- (a) if the agreement includes a provision enabling the landlord or the tenant to determine the agreement by notice (otherwise than on the grounds of a breach of the agreement) if—
 - (i) the period after the giving of notice and before the termination date specified in the notice is less than the period of notice required under that provision; or
 - (ii) the termination date specified in the notice is a date other than a date on which under that provision the agreement may be determined; or

S. 266(1)
amended by
No. 45/2002
s. 26(2)(a).

- (b) in any other case, if it specifies a termination date that is earlier than the end of the term of the tenancy agreement.
- (2) A notice under section 261 or section 263 is of no effect if it was given in response to the exercise, or proposed exercise, by the tenant of a right under this Act.
- (3) A person is not entitled to apply to the Tribunal challenging the validity of a notice—
 - (a) in the case of a notice under section 261 relating to a fixed term tenancy agreement for a fixed term of 6 months or more, after the end of 28 days after the date on which the notice is given; or
 - (b) in the case of a notice under section 261 relating to a fixed term tenancy agreement for a fixed term of less than 6 months, after the end of 21 days after the date on which the notice is given; or
 - (c) in the case of a notice under section 263, after the end of 60 days after the date on which the notice is given.

S. 266(3)(c)
amended by
No. 45/2002
s. 26(2)(b).

267 Notice by owner

- (1) If the landlord under a tenancy agreement is not the owner of the rented premises, the owner may exercise a right of the landlord—
 - (a) to give the tenant a notice to vacate the premises (except under section 254); or
 - (b) to recover possession of the premises; or
 - (c) to give a breach of duty notice under Part 5 that applies to the tenancy agreement.
- (2) A notice to vacate given in accordance with a right conferred by subsection (1) does not have effect unless it specifies a termination date on or

after the day on which the landlord's interest in the premises ends.

- (3) If the owner exercises a right conferred by subsection (1) in relation to a tenancy agreement, this Division, Part 5 and Part 7 have effect as if a reference to a landlord under a tenancy agreement included a reference to the owner.

268 Notice by mortgagee

- (1) If a mortgagee in respect of rented premises under a mortgage entered into before the tenancy agreement was entered into becomes entitled to possession of, or to exercise a power of sale in respect of, the premises under a mortgage, the mortgagee may give the tenant a notice to vacate the premises.
- (2) The notice must specify a termination date that is not less than 28 days after the date on which the notice is given.

268A Notice to vacate given by Tribunal order under Rooming House Operators Act 2016

S. 268A
inserted by
No. 26/2016
s. 91.

- (1) A landlord who is a rooming house owner must give a resident under a tenancy agreement a notice to vacate the room occupied by the resident if the Tribunal has made an order referred to in section 33(1)(b), 34(3)(c)(ii) or 83(3)(c)(iii) of the **Rooming House Operators Act 2016** in relation to the rooming house owner.
- (2) The notice must specify a termination date that is the date specified by the Tribunal as the termination date.

268B Notice to vacate—refusal of licence under Rooming House Operators Act 2016

S. 268B
inserted by
No. 26/2016
s. 91.

- (1) A rooming house owner who has entered into a tenancy agreement with a rooming house resident in accordance with section 94 may give the

resident a notice to vacate the room or rented premises occupied by the resident under that tenancy agreement if—

- (a) the rooming house owner's application for renewal of a licence under the **Rooming House Operators Act 2016** is refused by the Business Licensing Authority and section 29(1) or 29(2) of that Act apply; or
 - (b) the rooming house owner's application for a licence under the **Rooming House Operators Act 2016** is refused by the Business Licensing Authority and section 82(2) of that Act applies.
- (2) The notice must specify a termination date that is 120 days after the date on which the notice is given.

Division 2—Termination of residency rights in rooming houses

Subdivision 1—When does a residency right end?

269 Termination after notice

A residency right in respect of a room ends if—

- (a) the resident vacates the room after giving a notice of intention to vacate to the rooming house owner; or
- (b) the resident vacates the room after being given a notice to vacate.

270 Termination by Tribunal

A residency right in respect of a room ends on the date fixed in a possession order made by the Tribunal.

271 Termination by abandonment

A residency right ends if the room is abandoned by the resident who has that residency right and at least 14 days have passed since the last rent payment was due.

S. 271
amended by
No. 63/2005
s. 26.

272 Termination if room or rooming house destroyed

A residency right ends if the resident's room or the rooming house—

- (a) is unfit for human habitation; or
- (b) has been destroyed totally or to such an extent as to be rendered unsafe.

272A Residency rights—cancellation of licence or failure to renew licence

S. 272A
inserted by
No. 26/2016
s. 92.

A residency right does not end merely because—

- (a) an application for a licence, or for a renewal of a licence, to operate a rooming house under the **Rooming House Operators Act 2016** is refused; or
- (b) a licence to operate a rooming house under the **Rooming House Operators Act 2016** expires; or
- (c) the Tribunal cancels a licence to operate a rooming house under the **Rooming House Operators Act 2016**.

Note

See sections 16, 20 and 33(1)(a)(v) of the **Rooming House Operators Act 2016**.

273 Offences relating to interference with rights

- (1) Except in accordance with this Act, a person must not—
 - (a) require or force or attempt to require or force a resident to vacate his or her room; or

S. 273(1)
amended by
No. 67/2010
s. 135.

- (b) take or attempt to take possession of a room in which a resident resides.

Penalty: 60 penalty units in the case of a natural person;

300 penalty units in the case of a body corporate.

S. 273(2)
amended by
No. 67/2010
s. 135.

- (2) Except in accordance with this Act, a person must not, for the purposes of causing a resident to abandon a room—

- (a) interfere with the peace and comfort of a resident; or

- (b) withdraw any services or facilities reasonably required to allow a resident to reside in the room; or

- (c) prevent a resident from using any facilities; or

- (d) do any other act or thing intended or designed to cause the resident to abandon the room.

Penalty: 60 penalty units in the case of a natural person;

300 penalty units in the case of a body corporate.

Subdivision 2—Notice or abandonment by resident

274 Notice of intention to vacate room

A resident must give the rooming house owner at least 2 days notice of intention to vacate the room occupied by the resident.

275 Rent payable on termination without notice

- (1) A resident who vacates a room without giving notice must pay to the rooming house owner the rent for the lesser of the following periods—
 - (a) 2 days after vacating the room; or
 - (b) until another resident takes up occupancy of the room.

Penalty: 10 penalty units.

- (2) Subsection (1) does not apply if the rooming house or room has become unsafe or unfit for human habitation.

S. 275(1)
substituted by
No. 45/2002
s. 60,
amended by
No. 67/2010
s. 136.

276 Rent payable if room vacated early

A resident who vacates a room before the day specified in the notice of intention to vacate must pay to the rooming house owner the rent for the period from the day the resident vacated the room until the day specified in the notice.

277 Order of abandonment

- (1) If a rooming house owner believes that a resident has abandoned a room, the owner may apply to the Tribunal for an order declaring that the resident has abandoned the room.
- (2) An application under subsection (1) must be heard by the Tribunal within 5 business days after the application is made.
- (3) On an application under subsection (1), the Tribunal may by order declare that the room was abandoned by the resident on a day specified by the Tribunal.
- (4) The resident is deemed to have abandoned the room on that specified day.

S. 277(2)
amended by
No. 45/2002
s. 80.

Subdivision 3—Notice by rooming house owner or rooming house mortgagee

278 Damage

- (1) A rooming house owner may give a resident a notice to vacate the room occupied by the resident if the resident or the resident's visitor intentionally or recklessly causes or allows serious damage to any part of the rooming house.
- (2) The notice may specify a termination date that is the date on which the notice is given or a later date.

279 Danger

- (1) A rooming house owner may give a resident a notice to vacate the room occupied by the resident if the resident or the resident's visitor by act or omission causes a danger to any person or property in the rooming house.
- (2) The notice may specify a termination date that is the date on which the notice is given or a later date.
- (3) A rooming house owner is not entitled to give a notice to vacate under subsection (1) if a notice to leave under section 368 has been given in respect of that act or omission.

S. 279(3)
substituted by
No. 45/2002
s. 40.

280 Disruption

- (1) A rooming house owner may give a resident a notice to vacate the room occupied by the resident if the resident or the resident's visitor seriously interrupts the quiet and peaceful enjoyment of the rooming house by other residents.
- (2) The notice may specify a termination date that is the date on which the notice is given or a later date.

281 Non-payment of rent

- (1) A rooming house owner may give a resident a notice to vacate the room occupied by the resident if the resident owes at least 7 days rent to the rooming house owner.
- (2) The notice must specify a termination date that is not less than 2 days after the date on which the notice is given.

282 Failure of resident to comply with Tribunal order

- (1) A rooming house owner may give a resident a notice to vacate the room occupied by the resident if the resident fails to comply with an order of the Tribunal under section 212.
- (2) The notice must specify a termination date that is not less than 2 days after the date on which the notice is given.

283 Successive breaches by resident

- (1) A rooming house owner may give a resident a notice to vacate the room occupied by the resident without first serving a breach of duty notice under section 208 if—
 - (a) the resident has breached a duty provision within the meaning of Part 5; and
 - (b) on 2 previous occasions the resident has been in breach of the same provision; and
 - (c) the rooming house owner or the rooming house owner's agent has on each occasion referred to in paragraph (b) given a breach of duty notice to the resident under section 208.

S. 283(1)
amended by
No. 47/2012
s. 5(1)(a).

S. 283(1)(c)
amended by
Nos 45/2002
s. 89(3)(a),
47/2012
s. 5(1)(b).

* * * * *

S. 283(1)(d)
repealed by
No. 45/2002
s. 89(3)(b).

S. 283(1A)
inserted by
No. 47/2012
s. 5(2).

- (1A) If the rooming house owner gives a breach of duty notice to the resident under section 208 in respect of the breach referred to in subsection (1)(a), the rooming house owner must not give the resident a notice to vacate under this section unless the resident has not complied with the breach of duty notice within the required time.
- (2) The notice must specify a termination date that is not less than 2 days after the date on which the notice is given.

284 Use of room for illegal purpose

S. 284(1)
amended by
No. 63/2005
s. 27(1).

- (1) A rooming house owner may give a resident a notice to vacate the room (other than a shared room) occupied by the resident if the resident has used the room or permitted its use for any purpose that is illegal at common law or under an Act.

S. 284(1A)
inserted by
No. 63/2005
s. 27(2).

- (1A) A rooming house owner may give a resident of a shared room a notice to vacate that room if the resident has used the room or permitted his or her visitors to use the room for any purpose that is illegal at common law or under an Act.

S. 284(2)
amended by
No. 63/2005
s. 27(3).

- (2) A notice under this section must specify a termination date that is not less than 2 days after the date on which the notice is given.

285 Sale of rooming house

- (1) A rooming house owner may give a resident a notice to vacate the room occupied by the resident if immediately after the termination date the rooming house is to be sold or offered for sale with vacant possession.

S. 285(1A)
inserted by
No. 45/2002
s. 41(1).

- (1A) If a rooming house owner has entered into a contract of sale of the rooming house and the contract of sale is subject to one or more conditions which, if not satisfied, entitle a party to the contract to terminate the contract, the rooming house owner may, within 14 days after the last of

those conditions is satisfied, give a resident a notice to vacate the room occupied by the resident.

- (1B) If a rooming house owner has entered into a contract of sale of the rooming house which is not a contract of sale of the kind referred to in subsection (1A), the rooming house owner may, within 14 days after the contract of sale is entered into, give a resident a notice to vacate the room occupied by the resident.

S. 285(1B)
inserted by
No. 45/2002
s. 41(1).

- (2) A notice under this section must specify a termination date that is not less than 60 days after the date on which the notice is given.

S. 285(2)
amended by
No. 45/2002
s. 41(2).

286 Repairs or demolition

- (1) A rooming house owner may give a resident a notice to vacate the room occupied by the resident if—
- (a) the rooming house owner intends to repair, renovate, reconstruct or demolish the rooming house immediately after the termination date; and
 - (b) the rooming house owner has obtained all necessary permits and consents to carry out the work; and
 - (c) the work cannot be properly carried out unless the resident vacates the rooming house.
- (2) The notice must specify a termination date that is not less than 60 days after the date on which the notice is given.
- (3) If—
- (a) the proposed repairs, renovations or reconstruction will affect a resident's room but will not affect all the rooms in a rooming house; and

- (b) a room equivalent to the resident's room at an equivalent rent is available for rent in the rooming house—

the rooming house owner must not give the notice under subsection (1) unless the rooming house owner has first offered the equivalent room to the resident and the resident has refused to occupy that room in place of the resident's current room.

S. 287(1)
amended by
No. 67/2010
s. 137.

287 Prohibition on renting after notice

- (1) A rooming house owner must not rent a room vacated after a notice under section 286 for 6 months after the room is vacated.

Penalty: 60 penalty units in the case of a natural person;

300 penalty units in the case of a body corporate.

- (2) Subsection (1) does not apply if—

- (a) the Tribunal determines that the room may be rented; or
(b) the repairs, renovations or reconstruction have been completed.

S. 287A
inserted by
No. 45/2002
s. 42.

287A Resident in transitional housing refuses alternative accommodation

- (1) A rooming house owner which is the Director of Housing or a delegate of the Director of Housing may give a resident a notice to vacate a room occupied by the resident if—
- (a) the room was provided as transitional housing; and
- (b) the Director of Housing, under this section, has published requirements for residents of transitional housing to seek alternative accommodation; and

- (c) the resident has—
- (i) unreasonably refused to seek alternative accommodation in accordance with those requirements; or
 - (ii) refused a reasonable offer of alternative accommodation made in accordance with those requirements.
- (2) The notice must specify a termination date that is not less than 30 days after the date on which the notice is given.
- (3) In this section, *transitional housing* means accommodation for a period of more than 14 days and less than 12 months provided to persons in crisis as a result of homelessness or impending homelessness.
- (4) The Director of Housing, by notice published in the Government Gazette, may publish its requirements for residents of transitional housing to seek alternative accommodation.

288 Notice for no specified reason

- (1) A rooming house owner may give a resident a notice to vacate the room occupied by the resident without specifying a reason for giving the notice.
- (2) The notice must specify a termination date that is not less than 120 days after the date on which the notice is given.

S. 288(2)
amended by
No. 45/2002
s. 43(1).

289 Notice of no effect

- (1) A notice under section 288 is of no effect if it was given in response to the exercise, or proposed exercise, by the resident of a right under this Act.
- (2) A person is not entitled to apply to the Tribunal challenging the validity of a notice under subsection (1) after the end of 60 days after the date on which the notice is given.

S. 289(2)
amended by
No. 45/2002
s. 43(2).

S. 289A
inserted by
No. 67/2010
s. 79.

289A Notice by owner of building or other person who is not rooming house owner

- (1) This section applies if a person who is not a rooming house owner leases a building to another person and the building is being used, whether by that lessee or another person, to operate a rooming house and—
- (a) notice terminating the lease of the building is given by a party to that lease; or
 - (b) if the person operating the rooming house is not the lessee, the person operating the rooming house or any other party to any lease or other agreement under which that person occupies the building gives notice terminating that lease or other agreement; or
 - (c) the lease, or if the person operating the rooming house is not the lessee any lease or other agreement under which that person occupies the building, is terminated by consent or by agreement; or
 - (d) the lessee or other person operating the rooming house abandons the building.
- (2) Subject to subsection (2A), if this section applies notice to vacate must be given to each resident of the rooming house by—
- (a) a lessee of the building who is not the rooming house owner, or that person's agent, if—
 - (i) that person's lease is not terminated as set out in subsection (1)(a), (b) or (c); or
 - (ii) that person has not abandoned the building; or
 - (b) the owner of the building or the owner's agent.

S. 289A(2)
amended by
No. 57/2013
s. 13(1).

S. 289A(2A)
inserted by
No. 57/2013
s. 13(2).

- (2A) Notice to vacate does not have to be given under subsection (2) if either of the following intends to directly operate the premises as a rooming house following any termination or abandonment under subsection (1)—
- (a) the owner of the building; or
 - (b) the lessee of the building who is not the rooming house owner.
- (3) A notice to vacate given to a resident under subsection (2) must specify a date for vacating the building which is the later of—
- (a) 45 days after the date on which that notice to vacate is given; or
 - (b) in a case referred to in subsection (1)(a) or (b), the date which is the end of the period specified in the notice referred to in subsection (1)(a) or (b), as the case requires.
- (4) A person entitled to give notice to vacate to a resident under this section, or that person's agent, must make reasonable enquiries to identify each resident of the rooming house for the purposes of giving a notice to vacate under subsection (2).
- (5) Despite section 506(3), a notice is taken to be served on a resident of the rooming house if a copy of the notice is affixed to the door of the resident's room.
- (6) If a notice to vacate is given under this section, a resident of the rooming house—
- (a) may continue to occupy the room in the rooming house on the same terms and in the same state of repair or general condition that the resident occupied the room in the rooming house under the residency right granted by the rooming house owner; and

- (b) must pay rent to the owner of the building for the notice period, unless the resident can demonstrate that he or she has paid rent for the notice period to the rooming house owner.
- (7) Subject to subsection (9), nothing in this section imposes on a person entitled to give notice to vacate to a resident under this section the rights, duties and obligations of a rooming house owner.
- (8) Nothing in this section prevents a rooming house owner giving, in accordance with this Act, a notice to vacate to a resident with an earlier termination date than that referred to in subsection (3) for a notice to vacate under this section and such a notice to vacate given by the rooming house owner—
 - (a) prevails over any notice to vacate given to a resident under this section; and
 - (b) must be complied with by the resident in accordance with this Act.
- (9) If a person entitled to give notice to vacate to a resident under this section, or that person's agent, exercises a right conferred by subsection (2) in relation to a residency right, Part 3 (except sections 93, 94, 94A, 94B, 94C, 94D, 95, 96, 97, 98, 109, 124 and Division 8 of that Part), Part 5, sections 278, 279, 280, 281 and 284, Part 7 and Part 9 have effect as if a reference to a rooming house owner included a reference to the person entitled to give notice to vacate to a resident under this section.

(10) For the purposes of subsection (6), *notice period* means the period—

- (a) commencing on the day the person entitled to give notice to vacate to a resident under this section, or that person's agent, gives the resident a notice to vacate; and
- (b) ending on the day specified in the notice to vacate on which the resident must vacate the building.

290 Notice by rooming house mortgagee

- (1) A rooming house mortgagee may give a resident a notice to vacate a room if the rooming house mortgagee becomes entitled to possession of, or to exercise a power of sale in respect of, the rooming house under a mortgage.
- (2) The notice must specify a termination date that is not less than 28 days after the date on which the notice is given.

290A Notice to vacate given by Tribunal order under Rooming House Operators Act 2016

S. 290A
inserted by
No. 26/2016
s. 93.

- (1) A rooming house owner must give a resident a notice to vacate the room occupied by the resident if the Tribunal has made an order referred to in section 33(1)(b), 34(3)(c)(ii) or 83(3)(c)(iii) of the **Rooming House Operators Act 2016** in relation to the rooming house owner.
- (2) The notice must specify a termination date that is the date specified by the Tribunal as the termination date.

290B Notice to vacate—refusal of licence under Rooming House Operators Act 2016

S. 290B
inserted by
No. 26/2016
s. 93.

- (1) A rooming house owner may give a resident a notice to vacate the room occupied by the resident if—

- (a) the rooming house owner's application for renewal of a licence under the **Rooming House Operators Act 2016** is refused by the Business Licensing Authority and section 29(1) or 29(2) of that Act apply; or
 - (b) the rooming house owner's application for a licence under the **Rooming House Operators Act 2016** is refused by the Business Licensing Authority and section 82(2) of that Act applies.
- (2) The notice must specify a termination date that is 120 days after the date on which the notice is given.

Division 3—Termination of residency rights in caravan parks

Subdivision 1—When does a residency right end?

291 Termination after notice

A residency right in respect of a site or caravan in a caravan park ends if—

- (a) the resident vacates the site or caravan after giving a notice of intention to vacate to the caravan park owner or caravan owner; or
- (b) the resident vacates the site or caravan after being given a notice to vacate.

292 Termination by agreement

A residency right in respect of a site or caravan in a caravan park may be ended by agreement between the resident and the caravan park owner or caravan owner.

293 Termination on execution of warrant

If the Tribunal makes a possession order in respect of a caravan or site, a residency right ends on the day that the warrant of possession is executed.

294 Termination by abandonment

A residency right ends if the resident abandons the site or caravan.

295 Offences relating to interference with rights

S. 295
amended by
No. 67/2010
s. 138.

Except in accordance with this Act, a person must not—

- (a) require or force a resident to vacate a site or a caravan; or
- (b) take or attempt to take possession of a site by removing the caravan in which the resident resides; or
- (c) exclude or attempt to exclude from or restrict or attempt to restrict access to the site or the caravan or the caravan park in which either is situated; or
- (d) take or attempt to take possession of the caravan in which a resident resides; or
- (e) interfere with the peace and comfort of a resident for the purposes of causing the resident to abandon the site or the caravan; or

- (f) withdraw or restrict services or facilities which are reasonably required for the occupation of a site or a caravan as a residence for the purposes of causing the resident to abandon the site or caravan.

Penalty: 60 penalty units in the case of a natural person;
300 penalty units in the case of a body corporate.

Subdivision 2—Notice or abandonment by resident

296 Notice of intention to vacate site or caravan

- (1) A resident must give the caravan park owner at least 7 days notice of intention to vacate the site occupied by the resident.
- (2) A resident who hires a caravan from a caravan owner must give the caravan owner at least 7 days notice of intention to vacate the caravan.

297 Notice if caravan destroyed or unfit for habitation

- (1) A resident may give a notice of intention to vacate a caravan if the caravan—
 - (a) is unfit for human habitation; or
 - (b) has been destroyed totally or to such an extent as to be rendered unsafe.
- (2) The notice may specify a termination date that is the date on which the notice is given or a later date.
- (3) The notice under subsection (1) must be given to—
 - (a) the caravan owner or the caravan owner's agent; and
 - (b) the caravan park owner or the caravan park owner's agent.

**298 Rent or hiring charge payable on termination
without notice**

S. 298
substituted by
No. 45/2002
s. 61.

- (1) A resident who vacates a site without giving notice must pay to the caravan park owner the rent for the lesser of the following periods—
- (a) 7 days after vacating the site; or
 - (b) until another resident takes up occupancy of the site.

S. 298(1)
amended by
No. 67/2010
s. 139.

Penalty: 10 penalty units.

- (2) A resident who vacates a caravan without giving notice must pay to the caravan owner the hiring charge for the lesser of the following periods—
- (a) 7 days after vacating the caravan; or
 - (b) until another resident takes up occupancy of the caravan.

S. 298(2)
amended by
No. 67/2010
s. 139.

Penalty: 10 penalty units.

**299 Rent or hiring charge payable if site or caravan
vacated early**

- (1) A resident who vacates a site before the day specified in the notice of intention to vacate the site must pay to the caravan park owner the rent for the period from the day the resident vacated the site until the day specified in the notice.
- (2) A resident who vacates a caravan before the day specified in the notice of intention to vacate the caravan must pay to the caravan owner the hiring charge for the period from the day the resident vacated the caravan until the day specified in the notice.

300 Abandonment of site or caravan

S. 300(1)
substituted by
No. 45/2002
s. 54.

- (1) A resident abandons a site or caravan if the resident leaves it without any intention of returning and—
 - (a) without first giving notice of intention to vacate to the caravan park owner or the caravan owner; or
 - (b) without first obtaining the agreement of the caravan park owner or the caravan owner.
- (2) A resident may be regarded as having no intention of returning if—
 - (a) the resident has not occupied the site or caravan for a period of at least 14 days and has not paid any rent or hiring charges for that period; or
 - (b) the resident has left the site or caravan and in all the circumstances it would be unreasonable to expect him or her to return.

301 Order of abandonment

S. 301(2)
amended by
No. 45/2002
s. 80.

- (1) If a caravan park owner or caravan owner believes that a resident has abandoned a site or caravan, the caravan park owner or caravan owner may apply to the Tribunal for an order declaring that the resident has abandoned the site or caravan.
- (2) An application under subsection (1) must be heard by the Tribunal within 5 business days after the application is made.
- (3) On an application under subsection (1), the Tribunal may by order declare that the site or caravan was abandoned by the resident on a day specified by the Tribunal.
- (4) The resident is deemed to have abandoned the caravan or site on that specified day.

- (5) The caravan park owner may also apply to the Tribunal for an order—
 - (a) requiring the caravan mortgagee to pay rent until the caravan is removed from the site; and
 - (b) fixing the amount of that rent.
- (6) The rent is payable by the caravan mortgagee from the seventh day after the caravan park owner gives notice in writing to the caravan mortgagee of the orders under subsections (3) and (5).

Subdivision 3—Notice by caravan park owner, caravan owner or caravan mortgagee

302 Damage

- (1) A caravan park owner may give a resident a notice to vacate a site if the resident or the resident's visitor intentionally or recklessly causes or allows serious damage to the site or the caravan park or any facility in the caravan park.
- (2) A caravan owner may give a resident a notice to vacate a caravan if the resident or a resident's visitor intentionally or recklessly causes or allows serious damage to a caravan hired from the caravan owner.
- (3) The notice may require the resident to vacate the site or caravan immediately.

303 Danger

- (1) A caravan park owner may give a resident a notice to vacate a site if the resident or the resident's visitor by act or omission causes a danger to any person or property in the caravan park.
- (2) The notice may require the resident to vacate the site immediately.

S. 303(3)
substituted by
No. 45/2002
s. 55.

- (3) A caravan park owner is not entitled to give a notice to vacate under subsection (1) if a notice to leave under section 368 has been given in respect of that act or omission.

304 Disruption

- (1) A caravan park owner may give a resident a notice to vacate a site if the resident or the resident's visitor seriously interrupts the quiet and peaceful enjoyment of the caravan park by other occupiers.
- (2) The notice may require the resident to vacate the site immediately.

305 Non-payment of rent

- (1) A caravan park owner may give a resident a notice to vacate a site if the resident owes at least 7 days rent to the caravan park owner.
- (2) The notice must specify a termination date that is not less than 7 days after the date on which the notice is given.

306 Non-payment of hiring charges

- (1) A caravan owner may give a resident a notice to vacate a caravan if the resident owes at least 7 days hiring charges to the caravan owner.
- (2) The notice must specify a termination date that is not less than 7 days after the date on which the notice is given.

307 Failure of resident to comply with Tribunal order

- (1) A caravan park owner or caravan owner may give a resident a notice to vacate a site or caravan if the resident fails to comply with an order of the Tribunal under section 212.
- (2) The notice must specify a termination date that is not less than 7 days after the date on which the notice is given.

308 Successive breaches by resident

- (1) A caravan park owner or caravan owner may give a resident a notice to vacate a site or caravan without first serving a breach of duty notice under section 208 if—

S. 308(1)
amended by
No. 47/2012
s. 6(1)(a).

- (a) the resident has breached a duty provision within the meaning of Part 5; and
- (b) on 2 previous occasions the resident has been in breach of the same provision; and
- (c) the caravan park owner or caravan owner or that person's agent has on each occasion referred to in paragraph (b) given a breach of duty notice to the resident under section 208.

S. 308(1)(c)
amended by
Nos 45/2002
s. 89(4)(a),
47/2012
s. 6(1)(b).

* * * * *

S. 308(1)(d)
repealed by
No. 45/2002
s. 89(4)(b).

- (1A) If the caravan park owner or caravan owner gives a breach of duty notice to the resident under section 208 in respect of the breach referred to in subsection (1)(a), the caravan park owner or caravan owner must not give the resident a notice to vacate under this section unless the resident has not complied with the breach of duty notice within the required time.
- (2) The notice must specify a termination date that is not less than 7 days after the date on which the notice is given.

S. 308(1A)
inserted by
No. 47/2012
s. 6(2).

309 Use of site or caravan for illegal purpose

- (1) A caravan park owner or caravan owner may give a resident a notice to vacate a site or caravan if the resident has used the site or caravan or permitted its use for any purpose that is illegal at common law or under an Act.

- (2) The notice must specify a termination date that is not less than 7 days after the date on which the notice is given.

310 Sale of caravan

- (1) A caravan park owner may give a resident a notice to vacate a site if immediately after the termination date a caravan owned by the caravan park owner and occupied by the resident is to be sold.

S. 310(1A)
inserted by
No. 45/2002
s. 56(1).

- (1A) If a caravan park owner has entered into a contract of sale of a caravan owned by the caravan park owner and the contract of sale is subject to one or more conditions which, if not satisfied, entitle a party to the contract to terminate the contract, the caravan park owner may, within 14 days after the last of those conditions is satisfied, give a resident a notice to vacate the caravan occupied by the resident.

S. 310(1B)
inserted by
No. 45/2002
s. 56(1).

- (1B) If a caravan park owner has entered into a contract of sale of a caravan owned by the caravan park owner which is not a contract of sale of the kind referred to in subsection (1A), the caravan park owner may, within 14 days after the contract of sale is entered into, give a resident a notice to vacate the caravan occupied by the resident.

- (2) A caravan owner may give a resident a notice to vacate a caravan if immediately after the termination date a caravan owned by the caravan owner and occupied by the resident is to be sold.

S. 310(2A)
inserted by
No. 45/2002
s. 56(2).

- (2A) If a caravan owner has entered into a contract of sale of a caravan owned by the caravan owner and the contract of sale is subject to one or more conditions which, if not satisfied, entitle a party to the contract to terminate the contract, the caravan owner may, within 14 days after the last of those

conditions is satisfied, give a resident a notice to vacate the caravan occupied by the resident.

- (2B) If a caravan owner has entered into a contract of sale of a caravan owned by the caravan owner which is not a contract of sale of the kind referred to in subsection (2A), the caravan owner may, within 14 days after the contract of sale is entered into, give a resident a notice to vacate the caravan occupied by the resident.

S. 310(2B)
inserted by
No. 45/2002
s. 56(2).

- (3) A notice under this section must specify a termination date that is not less than 60 days after the date on which the notice is given.

S. 310(3)
amended by
No. 45/2002
s. 56(3)(a).

- (4) If an agreement under section 144 specifies a day on which the term of occupancy is to end, a notice under this section cannot specify a termination date that is earlier than the day on which the occupancy is to end.

S. 310(4)
amended by
No. 45/2002
s. 56(3)(b).

311 Change of use

- (1) A caravan park owner may give a resident a notice to vacate a site if the caravan park is to be converted to a use other than a caravan park.
- (2) The notice must specify a termination date that is not less than 6 months after the date on which the notice is given.
- (3) If an agreement under section 144 specifies a day on which the term of occupancy is to end, the notice cannot specify a termination date that is earlier than the day on which the occupancy is to end.

311A Closure of caravan park

- (1) Subject to subsection (2), a caravan park owner may give a resident a notice to vacate a site if the caravan park is to be closed.

S. 311A
inserted by
No. 45/2018
s. 323.

- (2) At least 14 days before giving a notice to vacate under subsection (1), the caravan park owner must give written notification to the municipal council in which the caravan park is situated of the proposed closure of that park.

Penalty: in the case of a natural person—
60 penalty units;
in the case of a body corporate—
300 penalty units.

- (3) The notice must specify a termination date that is not less than 6 months after the date on which the notice is given.

Note

See also section 215A in relation to compensation for eligible residents and effect on validity of notice to vacate.

- (4) If an agreement under section 144 specifies a day on which the term of occupancy is to end, the notice cannot specify a termination date that is earlier than the day on which the occupancy is to end.
- (5) Failure to give the written notification under subsection (2) does not invalidate any notice to vacate given under subsection (1).

312 Occupation by caravan owner

- (1) This section applies if a resident has hired a caravan for a fixed term.
- (2) A caravan owner may give a resident a notice to vacate a caravan if—
- (a) the caravan owner intends to occupy the caravan himself or herself; or

(b) the caravan owner intends to make it available for occupation by—

(i) his or her partner, son, daughter, parent or partner's parent; or

S. 312(2)(b)(i)
amended by
No. 27/2001
s. 3(Sch. 1
item 10.3(a)
(b)).

(ii) another person who normally lives with the caravan owner and is wholly or substantially dependent on the caravan owner.

(3) The notice must specify a termination date that is not less than 14 days after the end of the fixed term.

313 Prohibition on hiring of caravans or renting of sites after notice

(1) A caravan park owner must not rent a site vacated under section 310 or 311 for 6 months after the site is vacated.

S. 313(1)
amended by
No. 67/2010
s. 140.

Penalty: 60 penalty units in the case of a natural person;
300 penalty units in the case of a body corporate.

(2) A caravan owner must not hire out a caravan vacated under section 310 or 312 for 6 months after the caravan is vacated.

S. 313(2)
amended by
No. 67/2010
s. 140.

Penalty: 60 penalty units in the case of a natural person;
300 penalty units in the case of a body corporate.

(3) Subsection (1) does not apply if the Tribunal determines that the site may be rented.

- (4) Subsection (2) does not apply if—
 - (a) the Tribunal determines that the caravan may be hired out; or
 - (b) the caravan is vacated under section 312 and the caravan is hired out to a person referred to in that section.

314 Notice for no specified reason

- (1) A caravan park owner may give a resident a notice to vacate a site without specifying a reason for the giving of the notice.
- (2) A caravan owner may give a resident a notice to vacate a caravan without specifying a reason for the giving of the notice.
- (3) The notice must specify a termination date that is not less than 120 days after the date on which the notice is given.
- (4) The notice must not specify a termination date that is earlier than—
 - (a) the day specified in an agreement under section 144 as the day on which the term of occupancy is to end; or
 - (b) the day specified in an agreement under section 144 as the day on which the term of occupancy may be ended by a notice under this section; or
 - (c) the end of the period of notice required by an agreement under section 144 for a notice under this section.
- (5) Subsection (1) does not apply if the caravan park is to be converted to a use other than a caravan park.

S. 314(3)
amended by
No. 45/2002
s. 57(1).

315 Notice of no effect

- (1) A notice under section 311A or 314 is of no effect if it was given in response to the exercise, or proposed exercise, by the resident of a right under this Act.
- (2) A person is not entitled to apply to the Tribunal challenging the validity of a notice under this section after the end of 60 days after the date on which the notice is given.

S. 315(1)
amended by
No. 45/2018
s. 324.

S. 315(2)
amended by
No. 45/2002
s. 57(2).

316 Notice by caravan park mortgagee

- (1) A caravan park mortgagee may give a resident a notice to vacate a site if the caravan park mortgagee becomes entitled to possession of, or to exercise a power of sale in respect of, the caravan park under a mortgage.
- (2) The notice must specify a termination date that is—
 - (a) not less than 90 days after the date on which the notice is given if the mortgage was given before the resident obtained a residency right; or
 - (b) not less than 6 months after the date on which the notice is given if the mortgage was given after the resident obtained a residency right.

317 Notice by caravan mortgagee

- (1) A caravan mortgagee may give a resident who is not the caravan mortgagor a notice to vacate a caravan if the caravan mortgagee becomes entitled to possession of the caravan under a security.
- (2) The notice must specify a termination date that is—
 - (a) not less than 30 days after the date on which the notice is given if the security was given

before the resident obtained a residency right; or

- (b) not less than 6 months after the date on which the notice is given if the mortgage was given after the resident obtained a residency right.
- (3) If a caravan mortgagee becomes entitled to possession of a caravan under a security given by a resident who is the caravan mortgagor, the caravan mortgagee may exercise the rights given under the security.

Pt 6 Div. 3A
(Headings
and ss 317A–
317ZJ)
inserted by
No. 67/2010
s. 22.

Division 3A—Termination of site agreements in Part 4A parks

Subdivision 1—When can a site agreement be terminated?

S. 317A
inserted by
No. 67/2010
s. 22.

317A Termination of site agreement

Despite any Act or law to the contrary, a site agreement does not terminate and must not be terminated except in accordance with this Division or Part 7 or 8.

S. 317B
inserted by
No. 67/2010
s. 22.

317B Termination by agreement

A site agreement may be terminated by agreement of the site owner and site tenant.

S. 317C
inserted by
No. 67/2010
s. 22.

317C Termination by consent

- (1) A site agreement terminates if the site tenant vacates the Part 4A site with the consent of the site owner.
- (2) The consent, once given, is irrevocable.

317D Termination after notice to vacate

S. 317D
inserted by
No. 67/2010
s. 22.

A site agreement terminates if the site owner or the site tenant gives a notice to vacate or a notice of intention to vacate the Part 4A site under this Division and—

- (a) the site tenant vacates the Part 4A site on or after the termination date specified in the notice; or
- (b) the site agreement terminates in accordance with section 334.

317E Termination by abandonment

S. 317E
inserted by
No. 67/2010
s. 22.

A site agreement terminates if the site tenant abandons the Part 4A site.

317F Termination if Part 4A site is sub-let

S. 317F
inserted by
No. 67/2010
s. 22.

A site agreement terminates if—

- (a) the site tenant is not in possession, occupation or use of the Part 4A site because the site tenant has sub-let it; and
- (b) the site owner or site tenant gives a notice to vacate or a notice of intention to vacate the Part 4A site under this Division; and
- (c) the period (if any) between the date on which the notice is given and the termination date specified in the notice has expired.

317G Termination if site owner not owner of site

S. 317G
inserted by
No. 67/2010
s. 22.

A site agreement terminates if the land owner gives a notice to vacate in accordance with section 317ZE and—

- (a) the site tenant vacates the Part 4A site on or after the termination date specified in the notice; or
- (b) the site agreement terminates in accordance with section 334.

S. 317H
inserted by
No. 67/2010
s. 22.

317H Termination by merger

A site agreement may terminate by merger
(that is, where the interests of the site owner and
the site tenant become vested in one person).

S. 317I
inserted by
No. 67/2010
s. 22.

317I Termination by disclaimer

A site agreement may terminate by disclaimer
(for example, on repudiation of the agreement by
the site tenant accepted by the site owner).

S. 317J
inserted by
No. 67/2010
s. 22.

317J Termination by site tenant before occupation or use

A site agreement terminates if the site tenant has
not entered into occupation or use of the Part 4A
site and has given a notice of termination of the
site agreement to the site owner on the ground that
the Part 4A site—

- (a) is unsafe; or
- (b) is not legally available for use as a Part 4A
site; or
- (c) is for any other reason unavailable for
occupation.

S. 317K
inserted by
No. 67/2010
s. 22.

317K Offences relating to interference with rights

- (1) Except in accordance with this Act, a person must
not require, compel or attempt to compel a site
tenant to vacate a Part 4A site.

Penalty: 60 penalty units in the case of a natural
person;

300 penalty units in the case of a body
corporate.

- (2) Except in accordance with this Act, a person must
not exclude a site tenant or attempt to exclude a
site tenant from, or restrict or attempt to restrict a
site tenant's access to—

- (a) a site tenant's Part 4A dwelling; or

- (b) a Part 4A site on which the site tenant's Part 4A dwelling is situated; or
- (c) the Part 4A park in which the site tenant's Part 4A dwelling is situated.

Penalty: 60 penalty units in the case of a natural person;
300 penalty units in the case of a body corporate.

- (3) Except in accordance with this Act, a person must not interfere with the peace, comfort or privacy of a site tenant for the purposes of causing the site tenant to abandon the Part 4A site.

Penalty: 60 penalty units in the case of a natural person;
300 penalty units in the case of a body corporate.

- (4) Except in accordance with this Act, a person must not, for the purposes of causing a site tenant to abandon a Part 4A site—

- (a) withdraw or restrict services or facilities which are reasonably required for the occupation of a Part 4A dwelling on a Part 4A site as a residence; or
- (b) prevent the site tenant from using any facilities; or
- (c) do any other act or thing intended or designed to cause the site tenant to abandon the Part 4A site.

Penalty: 60 penalty units in the case of a natural person;
300 penalty units in the case of a body corporate.

Subdivision 2—Variations or creations of site agreement

**S. 317L
inserted by
No. 67/2010
s. 22.**

317L Creation of periodic site agreement

- (1) A site tenant is taken to occupy a Part 4A site under a periodic site agreement if—
 - (a) the term of a fixed term site agreement to which this Act applies ends; and
 - (b) the site tenant under that agreement continues in occupation of the Part 4A site otherwise than as a site tenant under a fixed term site agreement.
- (2) The rental period under the periodic site agreement created by subsection (1) is—
 - (a) if the rental period under the fixed term site agreement was more than one month, a monthly period; and
 - (b) if the rental period under the fixed term site agreement was one month or less, a period equivalent to that rental period.
- (3) Except as provided in subsection (2), the periodic site agreement is on the same terms, so far as applicable, as the terms of the fixed term site agreement.
- (4) On the application of the site owner or the site tenant, the Tribunal may make any variations to the terms of a periodic site agreement created under this section that are necessary for or appropriate to the continuation of a periodic site agreement.

317M Application for new site agreement because of final family violence intervention order

S. 317M
inserted by
No. 67/2010
s. 22.

- (1) This section applies if—
- (a) a site tenant is excluded from a Part 4A dwelling on a Part 4A site under an exclusion condition included in a final order; and
 - (b) a protected person under the final order—
 - (i) is also a party to the site agreement for the Part 4A site; or
 - (ii) is the owner or co-owner of the Part 4A dwelling at law or in equity.
- (2) The protected person may apply to the Tribunal for an order—
- (a) terminating the existing site agreement; and
 - (b) requiring the site owner of the Part 4A site to enter into a site agreement with the protected person and any other site tenant (other than the excluded site tenant) of the Part 4A site.
- (3) For the purposes of proceedings in relation to an application for an order under subsection (2), each of the following persons is a party to the proceeding—
- (a) the protected person;
 - (b) the site owner;
 - (c) the excluded site tenant;
 - (d) any other existing site tenants.
- (4) In this section—

final order means—

- (a) a final order within the meaning of the **Family Violence Protection Act 2008**;
or

S. 317M(4)
def. of *final order*
substituted by
No. 53/2016
s. 121.

- (b) a non-local DVO made by a court—
 - (i) that is a recognised DVO; and
 - (ii) that is a final order, within the meaning of the **National Domestic Violence Order Scheme Act 2016**.

S. 317N
inserted by
No. 67/2010
s. 22.

317N Tribunal orders for application made under section 317M

- (1) On an application under section 317M, the Tribunal may make an order terminating the existing site agreement and requiring the site owner to enter into a new site agreement with the protected person and other persons (if any) specified in the application if the Tribunal is satisfied that—
 - (a) the protected person and any other site tenants (other than the excluded site tenant) of the Part 4A site could reasonably be expected to comply with the duties of a site tenant under a site agreement to which this Act applies; and
 - (b) the protected person or the protected person's dependants would be likely to suffer severe hardship if the protected person were compelled to leave the Part 4A dwelling situated on the Part 4A site the subject of the site agreement; and
 - (c) the hardship suffered by the protected person would be greater than any hardship the site owner would suffer if the order were made; and
 - (d) it is reasonable to do so given the length of the exclusion under the final order and the length of the existing site agreement; and

- (e) it is reasonable to do so given the interests of any other site tenants (other than the excluded site tenant) under the existing site agreement and, in particular, whether the other site tenants support the protected person's application.
- (2) If the Tribunal makes an order under subsection (1) the new site agreement must—
 - (a) be subject to the same rent and frequency of rent payments as the existing site agreement; and
 - (b) if the existing site agreement is a fixed term agreement, run for a term not longer than the remainder of that fixed term; and
 - (c) otherwise, be on the same terms and conditions as the existing site agreement, subject to any changes the Tribunal determines.
- (3) If the Tribunal makes an order under subsection (1) the existing site agreement is terminated on the signing of the new site agreement.

317O Tribunal may determine parties' liability under terminated site agreement

S. 317O
inserted by
No. 67/2010
s. 22.

- (1) If the Tribunal makes an order under section 317N, the Tribunal may determine the liabilities of the excluded site tenant, the protected person or any other site tenants under the existing site agreement in relation to any existing liabilities under the existing site agreement, including but not limited to—
 - (a) liabilities relating to damage caused to the Part 4A site; and
 - (b) liabilities relating to outstanding utility charges.

- (2) For the avoidance of doubt, the termination of a site agreement under section 317N does not of itself give rise to a right to claim compensation on the part of any party to the site agreement for early termination of the site agreement.

S. 317P
inserted by
No. 67/2010
s. 22.

317P Cross-examination in proceedings for a new site agreement

- (1) In a hearing for proceedings arising out of, or relating to, an application under section 317M(2) an excluded site tenant must not personally cross-examine a protected person without leave of the Tribunal.
- (2) The Tribunal may grant leave under subsection (1) with or without conditions.
- (3) If leave is granted under subsection (1), the excluded site tenant may only cross-examine the protected person—
- (a) as to those matters set out in section 317N(1); and
 - (b) in accordance with any conditions to which the leave granted is subject.

S. 317Q
inserted by
No. 67/2010
s. 22.

317Q Reduction of fixed term site agreement

- (1) On the application of a party to a fixed term site agreement, the Tribunal may make an order—
- (a) reducing the term of the site agreement by a period stated in the order; and
 - (b) making any variations to the terms of the site agreement that are necessary because of the reduction of the term.
- (2) The Tribunal may only make an order under this section if it is satisfied that, because of an unforeseen change in the applicant's circumstances, the severe hardship which the applicant would suffer if the term of the site

agreement were not reduced would be greater than the hardship which the other party would suffer if the term were reduced.

(3) Without limiting subsection (2), the Tribunal may make an order under that subsection if satisfied that the applicant has experienced an unforeseen change in the applicant's circumstances that will cause the applicant to suffer severe hardship because—

(a) the applicant is a site tenant under the fixed term site agreement; and

(b) the applicant—

(i) is excluded from the Part 4A site the subject of the site agreement under a family violence intervention order or a non-local DVO made by a court that is a recognised DVO; or

S. 317Q(3)
(b)(i)
amended by
No. 53/2016
s. 122.

(ii) is a protected person under a family violence intervention order or a non-local DVO made by a court that is a recognised DVO and is seeking to reduce the term of the agreement to protect the person's own safety or the safety of his or her dependants.

S. 317Q(3)
(b)(ii)
amended by
No. 53/2016
s. 122.

(4) In making an order under this section, the Tribunal may determine the compensation (if any) to be paid by the applicant for the order to the other party because of the reduction in the term of the site agreement.

Subdivision 3—Notice of intention to vacate or abandonment by site tenant

317R Notice of intention to vacate

(1) A site tenant may give a site owner a notice of intention to vacate a Part 4A site.

S. 317R
inserted by
No. 67/2010
s. 22.

- (2) The notice of intention to vacate must specify a termination date that is not less than 28 days after the date on which the notice of intention to vacate is given.

S. 317S
inserted by
No. 67/2010
s. 22.

317S Notice to have no effect in certain circumstances

A notice of intention to vacate given under section 317R in respect of a fixed term site agreement is of no effect if it specifies a termination date that is earlier than the end of the term of the site agreement.

S. 317T
inserted by
No. 67/2010
s. 22.

317T Reduced period of notice of intention to vacate in certain circumstances

- (1) This section applies if—
- (a) a site tenant has been given a notice to vacate under section 317ZF; or
 - (b) a site tenant requires special or personal care and needs to vacate the Part 4A site in order to obtain that care; or
 - (c) a site tenant has received a written offer of public housing from the Director of Housing; or
 - (d) a site tenant requires temporary crisis accommodation and needs to vacate the Part 4A site in order to obtain that accommodation.
- (2) A site tenant to whom this section applies may give a site owner a notice of intention to vacate the Part 4A site under a fixed term site agreement specifying a termination date that is on or after the end of the term of the site agreement if the period between the date on which the notice is given and the termination date is not less than 14 days.
- (3) A site tenant to whom this section applies may give a site owner a notice of intention to vacate a Part 4A site under a periodic site agreement

specifying a termination date that is not less than 14 days after the date on which the notice is given.

(4) In this section *special or personal care* means—

- (a) assistance with one or more of the following—
 - (i) bathing, showering or personal hygiene;
 - (ii) toileting;
 - (iii) dressing or undressing;
 - (iv) meals; or
- (b) physical assistance for persons with mobility problems; or
- (c) assistance for persons who are mobile but require some form of supervision or assistance; or
- (d) assistance or supervision in dispensing medicine; or
- (e) the provision of substantial emotional support in a health or residential service.

317U Failure of site owner to comply with Tribunal order

**S. 317U
inserted by
No. 67/2010
s. 22.**

- (1) A site tenant may give a site owner a notice of intention to vacate a Part 4A site if the site owner fails to comply with an order of the Tribunal under section 212.
- (2) The notice of intention to vacate must specify a termination date that is not less than 14 days after the date on which the notice is given.

S. 317V
inserted by
No. 67/2010
s. 22.

317V Successive breaches by site owner

S. 317V(1)
amended by
No. 47/2012
s. 7(1)(a).

- (1) A site tenant under a fixed term site agreement may give a site owner a notice of intention to vacate a Part 4A site without first serving a breach of duty notice under section 208 if—

- (a) the site owner has breached a site owner's duty provision within the meaning of Part 5; and
- (b) on 2 previous occasions the site owner has been in breach of the same site owner's duty provision; and

S. 317V(1)(c)
amended by
No. 47/2012
s. 7(1)(b).

- (c) the site tenant or the site tenant's agent has on each occasion referred to in paragraph (b) given a breach of duty notice to the site owner under section 208.

S. 317V(1A)
inserted by
No. 47/2012
s. 7(2).

- (1A) If the site tenant gives a breach of duty notice to the site owner under section 208 in respect of the breach referred to in subsection (1)(a), the site tenant must not give the site owner a notice of intention to vacate under this section unless the site owner has not complied with the breach of duty notice within the required time.
- (2) The notice of intention to vacate must specify a termination date that is not less than 14 days after the date on which the notice of intention to vacate is given.

S. 317W
inserted by
No. 67/2010
s. 22.

317W Order of abandonment

- (1) If a site owner believes that a site tenant has abandoned a Part 4A site, the site owner may apply to the Tribunal for an order declaring that the site tenant has abandoned the Part 4A site.

- (2) An application under subsection (1) must be heard by the Tribunal within 5 business days after the application is made.
- (3) On an application under subsection (1), the Tribunal may by order declare that the Part 4A site was abandoned by the site tenant on a day specified by the Tribunal.
- (4) The site tenant is taken to have abandoned the Part 4A site on the day specified in the order.

Subdivision 4—Notice by site owner or mortgagee

317X Damage

S. 317X
inserted by
No. 67/2010
s. 22.

- (1) A site owner may give a site tenant a notice to vacate a Part 4A site if the site tenant or the site tenant's visitor intentionally or recklessly causes or allows serious damage to—
 - (a) the Part 4A site; or
 - (b) the Part 4A park; or
 - (c) any facility in the Part 4A park.
- (2) The notice to vacate may require the site tenant to vacate the Part 4A site immediately.

317Y Danger

S. 317Y
inserted by
No. 67/2010
s. 22.

- (1) A site owner may give a site tenant a notice to vacate a Part 4A site if the site tenant or the site tenant's visitor by act or omission causes a danger to any person or property in the Part 4A park.
- (2) The notice to vacate may require the site tenant to vacate the Part 4A site immediately.
- (3) A site owner is not entitled to give a notice to vacate under subsection (1) if a notice to leave under section 368 has been given in respect of that act or omission.

S. 317Z
inserted by
No. 67/2010
s. 22.

317Z Disruption

- (1) A site owner may give a site tenant a notice to vacate a Part 4A site if the site tenant or the site tenant's visitor seriously interrupts the quiet and peaceful enjoyment of the Part 4A park by other occupiers.
- (2) The notice to vacate may require the site tenant to vacate the Part 4A site immediately.

S. 317ZA
inserted by
No. 67/2010
s. 22.

317ZA Failure to comply with Tribunal order

- (1) A site owner may give a site tenant a notice to vacate a Part 4A site if the site tenant fails to comply with an order of the Tribunal under section 212.
- (2) The notice must specify a termination date that is not less than 14 days after the date on which the notice to vacate is given.

S. 317ZB
inserted by
No. 67/2010
s. 22.

317ZB Successive breaches by site tenant

S. 317ZB(1)
amended by
No. 47/2012
s. 8(1)(a).

- (1) A site owner may give a site tenant a notice to vacate a Part 4A site without first serving a breach of duty notice under section 208 if—
 - (a) the site tenant has breached a duty provision within the meaning of Part 5; and
 - (b) on 2 previous occasions the site tenant has been in breach of the same duty provision; and

S. 317ZB(1)(c)
amended by
No. 47/2012
s. 8(1)(b).

- (c) the site owner or the site owner's agent has on each occasion referred to in paragraph (b) given a breach of duty notice to the site tenant under section 208.

S. 317ZB(1A)
inserted by
No. 47/2012
s. 8(2).

- (1A) If the site owner gives a breach of duty notice to the site tenant under section 208 in respect of the

breach referred to in subsection (1)(a), the site owner must not give the site tenant a notice to vacate under this section unless the site tenant has not complied with the breach of duty notice within the required time.

- (2) The notice must specify a termination date that is not less than 14 days after the date on which the notice is given.

317ZC Use of Part 4A site for illegal purpose

S. 317ZC
inserted by
No. 67/2010
s. 22.

- (1) A site owner may give a site tenant a notice to vacate a Part 4A site if the site tenant has used the Part 4A dwelling on the Part 4A site or permitted its use for any purpose that is illegal at common law or under an Act.
- (2) The notice to vacate must specify a termination date that is not less than 14 days after the date on which the notice is given.

317ZD Assignment or sub-letting without consent

S. 317ZD
inserted by
No. 67/2010
s. 22.

- (1) A site owner may give a site tenant a notice to vacate a Part 4A site if the site tenant has assigned or sub-let or purported to assign or sub-let the whole or any part of the Part 4A site without the site owner's consent.
- (2) The notice must specify a termination date that is not less than 14 days after the date on which the notice to vacate is given.

317ZDA Closure of Part 4A park

S. 317ZDA
inserted by
No. 45/2018
s. 326.

- (1) Subject to subsection (2), a site owner may give a resident a notice to vacate a site if the Part 4A park is to be closed.
- (2) At least 14 days before giving a notice to vacate under subsection (1), the site owner must give written notification to the municipal council in which the Part 4A park is situated of the proposed closure of that park.

Penalty: in the case of a natural person—
60 penalty units;
in the case of a body corporate—
300 penalty units.

- (3) The notice must specify a termination date that is not less than 365 days after the date on which the notice is given.

Note

See also section 215A in relation to compensation for eligible site tenants and effect on validity of notice to vacate.

- (4) If a site agreement specifies a day on which the site agreement is to end, the notice cannot specify a termination date that is earlier than the day on which the site agreement is to end.
- (5) Failure to give the written notification under subsection (2) does not invalidate any notice to vacate given under subsection (1).

S. 317ZE
inserted by
No. 67/2010
s. 22.

317ZE Notice by land owner

- (1) If the site owner under a site agreement is not the owner of the Part 4A site, the owner may exercise a right of the site owner—
- (a) to give the site tenant a notice to vacate the site; or
 - (b) to recover possession of the Part 4A site; or
 - (c) to give a breach of duty notice under Part 5 that applies to the site agreement.
- (2) A notice to vacate given under subsection (1) does not have effect unless it specifies a termination date on or after the day on which the site owner's interest in the Part 4A site ends.
- (3) If an owner exercises a right conferred by subsection (1) in relation to a site agreement, this Division, Part 5 and Part 7 have effect as if a

reference to a site owner under a site agreement included a reference to the owner.

317ZF Notice under fixed term site agreement

S. 317ZF
inserted by
No. 67/2010
s. 22.

- (1) A site owner under a fixed term site agreement may, before the end of the term of the site agreement, give the site tenant a notice to vacate the Part 4A site at the end of the fixed term.
- (2) The notice to vacate must specify a termination date that is on or after the date of the end of the term.
- (3) The notice to vacate must specify a termination date that is not less than 365 days after the date on which the notice to vacate is given.

317ZG Notice under periodic site agreement

S. 317ZG
inserted by
No. 67/2010
s. 22.

- (1) A site owner under a periodic site agreement may give the site tenant a notice to vacate the Part 4A site.
- (2) The notice to vacate must specify a termination date that is not less than 365 days after the date on which the notice to vacate is given.

317ZH Notice of no effect

S. 317ZH
inserted by
No. 67/2010
s. 22.

- (1) A notice to vacate under section 317ZDA, 317ZF or 317ZG is of no effect if it was given in response to the exercise, or proposed exercise, by the site tenant of a right under this Act or the site agreement.
- (2) A person is not entitled to apply to the Tribunal challenging the validity of a notice to vacate under subsection (1) after the end of 60 days after the date on which the notice to vacate is given.

S. 317ZH(1)
amended by
Nos 57/2013
s. 14, 45/2018
s. 327.

S. 317ZI
inserted by
No. 67/2010
s. 22.

317ZI Notice by mortgagee of Part 4A park

- (1) A mortgagee of a Part 4A park may give a site tenant a notice to vacate a Part 4A site if the mortgagee becomes entitled to possession of, or to exercise a power of sale in respect of, the Part 4A park under a mortgage.
- (2) The notice to vacate must specify a termination date that is—
 - (a) on or after the date of the end of the fixed term and not less than 365 days from the date of the notice to vacate, if the site agreement is a fixed term site agreement that was entered into—
 - (i) before the mortgage was granted in respect of the Part 4A park; or
 - (ii) after the mortgage was granted in respect of the Part 4A park and is consistent with the terms of the mortgage agreement; or
 - (b) not less than 365 days from the date of the notice to vacate, if the site agreement is a periodic site agreement that commenced—
 - (i) before the mortgage was granted in respect of the Part 4A park; or
 - (ii) after the mortgage was granted in respect of the Part 4A park and is consistent with the terms of the mortgage agreement; or
 - (c) not less than 90 days from the date of the notice to vacate, if the site agreement—
 - (i) was entered into after the mortgage was granted in respect of the Part 4A park; and

- (ii) is inconsistent with the terms of the mortgage agreement.

Division 4—Notices under this Part

318 Form of notice of intention to vacate

- (1) A notice of intention to vacate rented premises or a caravan or site in a caravan park or a site in a Part 4A park is not valid unless it is in writing.
- (2) A notice of intention to vacate a room in a rooming house may be given orally or, if so required by the rooming house owner, in writing.
- (3) A notice of intention to vacate given under this Part which is in writing is not valid unless it is signed by the person giving the notice or by that person's agent.

S. 318(1)
amended by
No. 67/2010
s. 23.

319 Form of notice to vacate

A notice to vacate given under this Part is not valid unless—

- (a) it is in the relevant prescribed form; and
- (b) it is addressed to the tenant, resident or site tenant (as the case requires); and
- (c) it is signed by the person giving the notice or by that person's agent; and
- (d) except in the case of a notice under section 263, 288, 314, 317ZF or 317ZG, it specifies the reason or reasons for giving the notice; and

S. 319(a)
amended by
No. 45/2002
s. 62(a).

S. 319(b)
amended by
No. 67/2010
s. 24(a).

S. 319(d)
amended by
Nos 45/2002
s. 62(b),
67/2010
s. 24(b),
57/2013 s. 15.

S. 319(da)
inserted by
No. 45/2018
s. 325.

- (da) in the case of a notice to vacate given under section 311A or 317ZDA, it is accompanied by documentary evidence, as approved by the Director from time to time, which supports the reason for giving the notice to vacate; and
- (e) it specifies the date by which compliance is required (the *termination date*).

S. 319A
inserted by
No. 45/2002
s. 63.

319A Composite notices to vacate

If a person is or becomes entitled to give 2 or more notices to vacate under section 255, 256, 257, 258, 259, 260, 285 or 286—

- (a) the person may give one composite notice to vacate in accordance with section 319; and
- (b) that notice is to be taken to be a notice to vacate under each of the sections referred to in the notice.

320 What if 2 or more notices can be served?

If a person is or becomes entitled to give 2 or more notices of intention to vacate or notices to vacate under this Part—

- (a) the invalidity of any of the notices does not affect the validity of any other notice; and
- (b) each valid notice has full force and effect.

321 How can a notice be withdrawn?

- (1) Subject to subsections (2) and (3), a notice of intention to vacate or a notice to vacate given under this Part is withdrawn only if a notice of withdrawal is given.

- (2) Subject to subsection (3), a notice of withdrawal must be—
 - (a) in writing; and
 - (b) signed by the person who gave the notice; and
 - (c) signed by the person to whom the notice was given.
- (3) If a notice of intention to vacate a room is given orally, it may be withdrawn orally.

Division 5—Can a notice to vacate be challenged?

Pt 6 Div. 5
(Heading and
ss 321A–
321C)
inserted by
No. 45/2002
s. 64.

321A Application of Division

S. 321A
inserted by
No. 45/2002
s. 64.

Nothing in this Division affects any right a tenant or resident may have to challenge the validity of any other notice to vacate under this Act.

321B Tenant or resident may apply to Tribunal

S. 321B
inserted by
No. 45/2002
s. 64.

- (1) On or before the hearing of an application for a possession order in respect of a notice to vacate given under section 255, 256, 257, 258, 259, 260, 285, 286 or 310, a tenant or resident who has received the notice to vacate may apply to the Tribunal challenging the validity of the notice to vacate.
- (2) An application under subsection (1) must be made within 30 days after the notice to vacate is given.

321C What can the Tribunal order?

S. 321C
inserted by
No. 45/2002
s. 64.

- (1) The Tribunal may consider an application under section 321B and may determine whether or not the notice to vacate is valid.

- (2) If the Tribunal determines that the notice to vacate is valid, the tenant or resident is not entitled to bring any further application to the Tribunal to challenge the validity of the notice to vacate unless the Tribunal is satisfied that exceptional circumstances exist which justify reconsideration of the determination made under this section.
- (3) Nothing in subsection (2) affects the operation of section 479.

Part 7—Regaining possession—Possession orders and warrants

Division 1—Applications for possession orders

322 Application for possession order by landlord

- (1) A landlord may apply to the Tribunal for a possession order for rented premises if the landlord has given the tenant a notice to vacate the premises (other than a notice under section 261 or section 263).
- (2) A landlord may apply to the Tribunal for a possession order for rented premises if—
 - (a) the landlord has given the tenant a notice to vacate the premises under section 261 or section 263; and
 - (b) the tenant has not delivered up vacant possession of the premises.
- (3) A landlord may apply to the Tribunal for a possession order for rented premises if—
 - (a) the tenant has given the landlord a notice of intention to vacate the premises; and
 - (b) the tenant has not delivered up vacant possession of the premises.

323 Application for possession order by rooming house owner

A rooming house owner may apply to the Tribunal for a possession order for a room if—

- (a) the rooming house owner has given the resident a notice to vacate the room; or
- (b) the resident has given the rooming house owner a notice of intention to vacate the room.

S. 323A
inserted by
No. 67/2010
s. 80.

323A Application for possession order by person entitled to give notice to vacate under section 289A

A person entitled to give notice to vacate under section 289A may apply to the Tribunal for a possession order for the building if—

- (a) the person has given a resident a notice to vacate under section 289A; and
- (b) the resident fails to vacate the building by the date specified in that notice to vacate.

324 Application for possession order by caravan park owner or caravan owner

- (1) A caravan park owner may apply to the Tribunal for a possession order for a site if the caravan park owner has given the resident a notice to vacate the site.
- (2) A caravan owner may apply to the Tribunal for a possession order for a caravan if the caravan owner has given a resident a notice to vacate the caravan.
- (3) A caravan park owner or caravan owner may apply to the Tribunal for a possession order if the resident has given the owner a notice of intention to vacate the site or caravan.

S. 324A
inserted by
No. 67/2010
s. 25.

324A Application for possession order by site owner

- (1) A site owner may apply to the Tribunal for a possession order for a Part 4A site if the site owner has given the site tenant a notice to vacate the Part 4A site.
- (2) A site owner may apply to the Tribunal for a possession order if the site tenant has given the site owner a notice of intention to vacate the Part 4A site.

325 Application for possession order by mortgagee

- (1) A mortgagee of rented premises may apply to the Tribunal for a possession order for rented premises if—
 - (a) the mortgagee has given the tenant a notice to vacate the premises; and
 - (b) the tenant has not delivered up vacant possession of the premises.
- (2) A rooming house mortgagee may apply to the Tribunal for a possession order if—
 - (a) the rooming house mortgagee has given a resident a notice to vacate a room; and
 - (b) the resident fails to vacate the room by the date specified in the notice.
- (3) A caravan park mortgagee or caravan mortgagee may apply to the Tribunal for a possession order if—
 - (a) the mortgagee has given a resident a notice to vacate the site or caravan; and
 - (b) the resident fails to vacate the site or caravan by the date specified in the notice.
- (4) A Part 4A site mortgagee may apply to the Tribunal for a possession order if—
 - (a) the mortgagee has given a site tenant a notice to vacate the Part 4A site in accordance with section 317ZI; and
 - (b) the site tenant fails to vacate the Part 4A site by the date specified in the notice to vacate.

**S. 325(4)
inserted by
No. 67/2010
s. 26.**

326 Time for application

S. 326(1)
amended by
No. 67/2010
s. 27(a).

- (1) An application under section 322(1), 323(a), 324(1), 324(2) or 324A(1) may be made at any time after the notice to vacate is given but not later than 30 days after the termination date specified in the notice.

S. 326(2)
amended by
No. 67/2010
s. 81(a).

- (2) An application under section 322(2), 322(3), 323A or 325 must be made after the termination date specified in the notice to vacate but not later than 30 days after that date.

S. 326(3)
amended by
No. 67/2010
s. 27(b).

- (3) An application under section 323(b), 324(3) or 324A(2) must be made after the end of 7 days after the date on which the notice of intention to vacate is given but not later than 30 days after the termination date specified in the notice.

327 Applications where composite notice to vacate is given

S. 327
repealed by
No. 52/1998
s. 236(l),
new s. 327
inserted by
No. 45/2002
s. 65,
amended by
No. 67/2010
s. 28.

If a composite notice to vacate as provided for in section 319A has been given to a tenant or resident, a composite application may be made under section 322(1), 323(a), 324(1) or (2) or 324A(1) (as the case requires) in respect of each of the notices to vacate included in the composite notice to vacate.

* * * * *

S. 328
repealed by
No. 52/1998
s. 236(l).

329 Hearing of application for possession order

The Tribunal must not determine an application for a possession order under this Division earlier than the termination date specified in the notice to vacate or notice of intention to vacate accompanying the application.

330 Order of Tribunal

- (1) The Tribunal must make a possession order requiring a tenant, resident or site tenant to vacate rented premises, a room and rooming house or a building, a site or a caravan on the day specified in the order if the Tribunal is satisfied—
- (a) in the case of an application where notice to vacate has been given, that—
- (i) the landlord, rooming house owner, caravan park owner, caravan owner, site owner, person entitled to give a notice to vacate under section 289A or mortgagee was entitled to give the notice; and
- (ii) the notice has not been withdrawn; and
- (b) in the case of an application where a notice of intention to vacate has been given by a tenant, resident or site tenant, that the landlord, rooming house owner, caravan park owner, caravan owner or site owner acted reasonably by relying on the notice of intention to vacate; and
- (c) that the landlord, rooming house owner, caravan park owner, caravan owner, site owner, person entitled to give a notice to vacate under section 289A or mortgagee has complied with section 72 of the **Victorian Civil and Administrative Tribunal Act 1998**; and
- (d) that the tenant, resident or site tenant is still in possession of the rented premises, room, building, site or caravan after the termination date specified in the notice to vacate or notice of intention to vacate; and

S. 330(1)
amended by
No. 67/2010
ss 29(1)(a),
81(b)(i).

S. 330(1)(a)(i)
amended by
No. 67/2010
ss 29(1)(b),
81(b)(ii).

S. 330(1)(b)
amended by
No. 67/2010
s. 29(1)(a)(c).

S. 330(1)(c)
amended by
Nos 101/1998
s. 32, 67/2010
ss 29(1)(b),
81(b)(iii).

S. 330(1)(d)
amended by
Nos 67/2010
ss 29(1)(a),
81(b)(iv),
57/2013
s. 16(a).

S. 330(1)(e)
inserted by
No. 57/2013
s. 16(b).

- (e) that any resident who is entitled to a period of notice under section 289A has been given the required notice.

S. 330(2)
substituted by
No. 45/2002
s. 81,
amended by
No. 67/2010
ss 29(2), 81(c).

- (2) If an application for a possession order is made under section 322(3), 323(b), 323A, 324(3) or 324A(2)—
 - (a) the application must be heard within 14 days after the application is made; and
 - (b) the possession order must be made within 7 days of that hearing.

331 Order to be dismissed or adjourned in certain circumstances

- (1) The Tribunal may dismiss or adjourn an application for a possession order if—
 - (a) the application is supported with—
 - (i) in the case of rented premises, a notice to vacate given under section 246; or
 - (ii) in the case of a rooming house, a notice to vacate given under section 281; or
 - (iii) in the case of a caravan or site, a notice to vacate given under section 305 or 306; or
 - (iv) in the case of a Part 4A site, a notice to vacate given under section 317ZB in respect of successive breaches by the site tenant of the duty to pay rent; and
 - (b) the Tribunal considers that satisfactory arrangements have been or can be made to avoid financial loss to the landlord, rooming house owner, caravan park owner, caravan owner or site owner (as the case may be).

S. 331(1)(a)(iii)
amended by
No. 67/2010
s. 30(1)(a).

S. 331(1)(a)(iv)
inserted by
No. 67/2010
s. 30(1)(b).

S. 331(1)(b)
amended by
No. 67/2010
s. 30(1)(c).

(2) An adjournment may be on any terms the Tribunal thinks fit.

(3) On the resumption of an adjourned hearing, the Tribunal—

S. 331(3)
substituted by
No. 45/2002
s. 82.

(a) may make a possession order if the tenant or site tenant has continued to accrue arrears of rent during the adjournment period; and

S. 331(3)(a)
amended by
No. 67/2010
s. 30(2).

(b) must dismiss the application if the tenant or site tenant—

S. 331(3)(b)
amended by
No. 67/2010
s. 30(2).

(i) has paid all the arrears which were the subject of the original application; and

(ii) has accrued no further arrears of rent from the time of the application to the date of resumption of the adjourned hearing.

332 Order not to be made in certain circumstances

(1) Despite section 330, the Tribunal must not make a possession order if—

(a) the application for the order is supported with a notice to vacate given under section 248, 282, 307 or 317U; and

S. 332(1)(a)
amended by
No. 67/2010
s. 31(a).

(b) the Tribunal is satisfied that—

(i) the failure to comply with an order of the Tribunal was trivial or has been remedied as far as possible; and

(ii) there will not be any further breach of the duty; and

(iii) the breach of duty is not a recurrence of a previous breach of duty.

S. 332(2)(a)
amended by
No. 67/2010
s. 31(b).

(2) Despite section 330, the Tribunal must not make a possession order if—

- (a) the application for the order is supported by a notice to vacate given under section 280, 304 or 317Z; and
- (b) the Tribunal is satisfied that—
 - (i) the interruption to quiet and peaceful enjoyment of the rooming house or the caravan park (as the case may be) has ceased; and
 - (ii) the disturbance is not a recurrence and will not be repeated.

333 Contents of possession order

(1) A possession order must include—

- (a) the day (being a day not more than 30 days after the day on which the possession order is made) by which—
 - (i) in the case of rented premises, the tenant must vacate those rented premises; and
 - (ii) in the case of a room in a rooming house, the resident must vacate the room and rooming house; and
- (ia) in the case of a building in respect of which notice under section 289A was given, the resident must vacate that building; and
- (iii) in the case of a site or caravan, the resident must vacate the site or caravan; and

S. 333(1)
(a)(ia)
inserted by
No. 67/2010
s. 81(d),
amended by
No. 47/2012
s. 30.

- | | |
|--|---|
| (iv) in the case of a Part 4A site, the site tenant must vacate the Part 4A site and remove the Part 4A dwelling situated on the Part 4A site, if the Part 4A dwelling is to be removed; and | S. 333(1)(a)(iv) inserted by No. 67/2010 s. 32(1)(a). |
| (b) a direction to the tenant, resident or site tenant (as the case may be) to vacate the rented premises, room and rooming house, building, site or caravan by the day specified in the order; and | S. 333(1)(b) amended by No. 67/2010 ss 32(1)(b), 81(e)(i). |
| (c) a direction to the principal registrar to issue a warrant of possession in accordance with section 351 on the application of the person who obtained the possession order. | S. 333(1)(c) amended by No. 45/2002 s. 96(a). |
| (1A) Despite subsection (1)(a), if a resident referred to in subparagraph (ia) is entitled to a longer period of notice under section 289A, the possession order must specify a day that gives the resident not less than that longer period of notice as the day by which the resident must vacate the building. | S. 333(1A) inserted by No. 57/2013 s. 17. |
| (2) A possession order for rented premises or a room in a rooming house or a building must also include a warning that if the tenant or resident fails to comply with the direction in subsection (1)(b), he or she may be forcibly vacated from the rented premises or room and rooming house or the building by a police officer or an authorised person carrying out a warrant of possession. | S. 333(2) amended by Nos 67/2010 s. 81(e)(ii)(iii), 37/2014 s. 10(Sch. item 144.2). |
| (3) A possession order for a site or caravan must also include a warning that if the resident and any other person residing at the site or in the caravan fails to comply with the direction referred to in subsection (1)(b)— | |

S. 333(3)(a)
amended by
No. 37/2014
s. 10(Sch.
item 144.2).

(a) if the resident had a right to reside in a caravan owned by a caravan owner, he or she and any other person residing at the site or in the caravan may be forcibly vacated from the site and the caravan park by a police officer or an authorised person carrying out a warrant of possession; or

S. 333(3)(b)
amended by
No. 37/2014
s. 10(Sch.
item 144.2).

(b) if the resident had a right to occupy a site in a caravan owned by the resident, he or she and any other person residing at the site or in the caravan may be forcibly vacated from the site and the caravan park by a police officer or an authorised person carrying out a warrant of possession and the caravan may be removed from the caravan park and held under Division 5.

S. 333(4)
inserted by
No. 67/2010
s. 32(2),
amended by
No. 37/2014
s. 10(Sch.
item 144.2).

(4) A possession order for a site in a Part 4A park must also include a warning that if the site tenant and any other person residing at the Part 4A site fails to comply with the direction referred to in subsection (1)(b), the site tenant and any other person residing at the Part 4A site in a Part 4A dwelling may be forcibly removed from the Part 4A site and the Part 4A dwelling by a police officer or an authorised person carrying out a warrant of possession.

S. 334
(Heading)
inserted by
No. 67/2010
s. 33(1).
S. 334
amended by
No. 67/2010
s. 33(2) (ILA
s. 39B(1)).

334 Effect of possession order for rented premises or Part 4A site

(1) If a possession order is made under this Division in respect of rented premises, the tenancy agreement terminates at the end of the day before the day on which possession of the rented premises is delivered up to the landlord or mortgagee.

- (2) If a possession order is made under this Division in respect of a Part 4A site, the site agreement terminates at the end of the day before the day on which possession of the Part 4A site is delivered up to the site owner or mortgagee.

S. 334(2)
inserted by
No. 67/2010
s. 33(2).

Division 2—Alternative procedure for possession

335 Application for possession order where rent owing

A landlord may apply to the Tribunal for a possession order for rented premises if the tenant owes at least 14 days rent to the landlord.

336 Landlord to give tenant notice to vacate

- (1) On making an application under section 335, the landlord must give to the tenant personally or by registered post a notice to vacate the rented premises.
- (2) The notice must specify a termination date that is not less than 14 days after the date on which the notice is given.
- (3) The notice to vacate must be accompanied by—
- (a) a copy of the landlord's application under section 335; and
 - (b) 2 notice of objection forms in the prescribed form; and
 - (c) a statement in the prescribed form setting out in summary form the tenant's rights under this Division.

337 Landlord may apply for possession order in respect of notice under section 261

- (1) If a landlord has given a notice to vacate under section 261, the landlord may give the tenant a further notice informing the tenant that the landlord intends to apply to the Tribunal under this section for a possession order if the tenant

does not deliver up vacant possession of the rented premises by the end of the termination date set out in the notice to vacate.

- (2) A notice must be given to the tenant under subsection (1)—
- (a) in the case of a fixed term tenancy agreement for a term of 6 months or more, not less than 14 days and not more than 21 days before the termination date specified in the notice to vacate; and
 - (b) in the case of a fixed term tenancy agreement for a term of less than 6 months, not less than 7 days and not more than 14 days before the termination date specified in the notice to vacate.
- (3) A landlord may apply to the Tribunal for a possession order if—
- (a) the landlord has given the tenant a notice to vacate under section 261 and a notice in accordance with subsections (1) and (2); and
 - (b) the tenant has not delivered up vacant possession of the rented premises by the end of the termination date specified in the notice to vacate.
- (4) The landlord must give a copy of the application under subsection (3) to the tenant accompanied by—
- (a) 2 notice of objection forms in the prescribed form; and
 - (b) a statement in the prescribed form setting out in summary form the tenant's rights under this Division.

338 Objection by tenant

- (1) If a tenant wishes to object to the making of a possession order under this Division, the tenant must—
 - (a) lodge a notice of objection in the prescribed form with the Tribunal in the prescribed manner; and
 - (b) serve a notice of objection in the prescribed form on the landlord.
- (2) A tenant who lodges a notice of objection under subsection (1) must lodge it—
 - (a) in the case of a notice of objection in relation to an application under section 335, before 4 p.m. on the termination date; or
 - (b) in the case of a notice of objection in relation to a notice to vacate given under section 261, before the end of 4 business days after the date on which the tenant received the copy of the application under section 337.
- (3) On the lodging of the notice of objection, Division 1 applies—
 - (a) in relation to an application under section 335, as if the application for the possession order were made under section 322 after giving a notice to vacate under section 246; and
 - (b) in relation to an application under section 337, as if the application for the possession order were made under section 322.

339 Request for determination if no notice of objection

S. 339(1)
amended by
No. 52/1998
s. 236(m).

- (1) If the tenant does not lodge a notice of objection with the Tribunal within the period specified under section 338, the landlord may lodge a request for determination with the Tribunal.
- (2) A request for determination must be made within 28 days after the termination date set out in the notice to vacate.
- (3) If the request for determination is not made within the required period the application for the possession order is deemed to be withdrawn.

S. 340
repealed by
No. 52/1998
s. 236(n).

* * * * *

341 Principal registrar to make determination if no notice of objection

S. 341(1)
amended by
No. 52/1998
s. 236(o).

- (1) If a request for determination is made under section 339 in relation to an application under section 335 and the principal registrar is satisfied that the determination should be made, the principal registrar must—
 - (a) make a possession order directing the tenant to vacate the rented premises immediately or if a later day is specified by the landlord, that later day; and
 - (b) make a determination of the amount of rent owing to the landlord by the tenant at the date of the landlord's affidavit; and
 - (c) make a determination directing the Authority to pay out an amount of bond to or on account of the landlord in respect of the rent owing.

- (2) If a request for determination is made under section 339 in relation to a notice to vacate given under section 261 and the principal registrar is satisfied that the determination should be made, the principal registrar—
- S. 341(2)
amended by
No. 52/1998
s. 236(o).
- (a) must make a possession order directing the tenant to vacate the rented premises immediately or if a later day is specified by the landlord, that later day; and
 - (b) may make a determination of the amount of rent owing to the landlord by the tenant (if any) at the date of the landlord's affidavit; and
 - (c) may make a determination directing the Authority to pay out an amount of bond to or on account of the landlord in respect of the rent owing (if any).
- (3) A possession order under this section must provide that—
- (a) a warrant of possession must be issued on the application of the landlord; and
 - (b) an application to the principal registrar for the issue of a warrant of possession must be made not more than 30 days after the day on which the order is made; and
 - (c) the warrant of possession must be executed not more than 30 days after the day on which the warrant is issued.
- S. 341(3)(b)
amended by
No. 52/1998
s. 236(o).
- (4) A possession order under this section must include a warning that if the tenant fails to comply with a direction under subsection (1)(a) or subsection (2)(a), he or she may be forcibly vacated from the rented premises by a police officer or an authorised person carrying out a warrant of possession.
- S. 341(4)
amended by
No. 37/2014
s. 10(Sch.
item 144.2).

S. 341(5)
amended by
No. 52/1998
s. 236(o).

- (5) An order or determination of the principal registrar under this section is deemed to be an order or determination of the Tribunal

342 Effect of possession order

If a possession order is made under this Division, the tenancy agreement terminates at the end of the day before the day on which possession of the rented premises is delivered up to the landlord.

343 What if the principal registrar is not satisfied that determination should be made?

S. 343(1)
amended by
No. 52/1998
s. 236(o).

- (1) If the principal registrar is not satisfied that the determination should be made, the principal registrar may, or if the applicant so requests, must, refer the matter to the Tribunal for determination.
- (2) Division 1 applies to a request for determination referred to the Tribunal under subsection (1)—
- (a) in relation to an application under section 335, as if the request for determination were an application for a possession order made under section 322 after giving a notice to vacate under section 246; and
 - (b) in relation to an application under section 337, as if the request for determination were an application for a possession order made under section 322.

Division 3—Recovery of possession of rented premises where occupied without consent

344 Application for possession order if premises occupied without consent

- (1) A person who claims to be entitled to the possession of premises may apply to the Tribunal for a possession order if—
- (a) the premises have been rented premises under a tenancy agreement at any time within the period of 12 months before the date of the application; and
 - (b) the applicant alleges that the premises are occupied solely by a person (not being a tenant under a tenancy agreement) who entered into or remained in occupation without the applicant's licence or consent or that of any predecessor in title of the applicant.

* * * * *

S. 344(2)
repealed by
No. 52/1998
s. 236(p).

345 Order of Tribunal

The Tribunal must make a possession order for the premises if the Tribunal is satisfied that—

- (a) the applicant under section 344 is entitled to possession of the premises; and
- (b) there are reasonable grounds for believing that a person is occupying the premises without licence or consent.

346 What must the possession order provide?

A possession order under this Division must—

S. 346(a)
amended by
No. 52/1998
s. 236(q).

(a) direct the principal registrar to issue without delay a warrant of possession against all persons for the time being occupying the premises; or

S. 346(b)
amended by
No. 52/1998
s. 236(r).

(b) provide that notice in the form prescribed by the rules of the Tribunal be served without delay on all persons for the time being occupying the premises requiring them—

(i) to appear before the Tribunal on a day after the end of 7 days after the giving of the notice; and

(ii) to show cause why a warrant of possession should not be issued.

347 Notice to occupiers of premises

If a possession order under this Division requires a notice to be given, the applicant for the order must serve a copy of the order and the notice on all persons for the time being occupying the premises by affixing the copy of the order and the notice to a door giving access to the premises.

348 Direction of Tribunal if occupier fails to appear

S. 348(1)
amended by
No. 52/1998
s. 236(q).

- (1) If a person on whom a copy of an order and a notice is served under this Division fails to appear before the Tribunal in accordance with the notice, the Tribunal must direct the principal registrar to issue without delay a warrant of possession against all persons for the time being occupying the premises.
- (2) The Tribunal must not give a direction under subsection (1) unless it is satisfied that the copy of the possession order and the notice were served in accordance with this Division.

349 Order of Tribunal if occupier appears

If a person on whom a copy of an order and a notice is served under this Division appears to answer the notice, the Tribunal—

- (a) on giving both parties an opportunity to be heard, must determine the matter; and
- (b) if it is satisfied that the applicant is entitled to the premises, must direct the principal registrar to issue a warrant of possession against all persons for the time being occupying the premises; and
- (c) if it is not satisfied that the applicant is entitled to the premises, may cancel the possession order.

S. 349(b)
amended by
No. 52/1998
s. 236(q).

350 Effect of this Division

This Division has effect despite anything to the contrary in any other provision of this Act.

Division 4—Warrants of possession

351 Issue of warrant of possession

- (1) Subject to subsection (2), a person who obtains a possession order under this Part may apply to the principal registrar for a warrant of possession—
 - (a) immediately, if the possession order so provides; or
 - (b) within 6 months after the date of the possession order if the tenant, resident or site tenant fails to comply with the possession order.
- (2) A person who obtains a possession order under Division 2 may apply to the principal registrar for a warrant of possession not more than 30 days after the date of the possession order.

S. 351(1)
amended by
No. 52/1998
s. 236(q).

S. 351(1)(b)
amended by
No. 67/2010
s. 34.

S. 351(2)
amended by
No. 52/1998
s. 236(q).

- (3) An application under this section must be accompanied by the prescribed fee (if any).
- (4) Subject to this Division, a warrant must be executed within the time stated in the possession order which must not exceed 30 days after the date of issue of the warrant.

352 Postponement of issue of warrant in certain cases

S. 352(1)
amended by
No. 67/2010
s. 35(1)(a).

- (1) The Tribunal may provide in a possession order under this Part in relation to rented premises or Part 4A site that the issue of a warrant of possession be postponed for a period specified in the order, if the Tribunal is satisfied that—

S. 352(1)(a)
amended by
No. 67/2010
s. 35(1)(b).

- (a) the tenant or site tenant (as the case may be) would suffer hardship if the issue of the warrant were not postponed; and

S. 352(1)(b)
amended by
No. 67/2010
s. 35(1)(c).

- (b) the hardship would be greater than any hardship that the landlord, site owner or mortgagee (as the case may be) would suffer because of the postponement.

- (2) The period of postponement specified in the order must not exceed 30 days after the date that the order is made.

- (3) This section does not apply to—

S. 352(3)(a)
amended by
No. 67/2010
s. 35(2).

- (a) an order made on the application of a landlord or site owner who has given a notice to vacate the rented premises under sections 243 to 245, 317X or 317Y; or

- (b) an order made under Division 2.

S. 353
amended by
No. 67/2010
s. 36(a)–(c).

353 Immediate issue of warrant if failure to comply during postponement

On the application of the landlord, site owner or mortgagee of rented premises or a Part 4A site (as the case may be), the Tribunal may order that a warrant of possession be issued without delay if

the Tribunal is satisfied that, during any period of postponement specified in an order under section 352, the tenant or site tenant—

- (a) has failed to pay any rent accrued due; or
- (b) has otherwise failed to comply with the tenancy agreement or site agreement; or

S. 353(b)
amended by
No. 67/2010
s. 36(d).

- (c) has failed to comply with a provision of this Act relating to the tenancy agreement or site agreement.

S. 353(c)
amended by
No. 67/2010
s. 36(d).

354 Extension of time for warrant to be executed

- (1) On the application of the person who obtained the warrant of possession, the Tribunal may from time to time make an order extending the time in which the warrant of possession may be executed.
- (2) An order under subsection (1) must not at any one time extend the time in which a warrant of possession may be executed by more than 30 days after the day on which the time for execution of the warrant would otherwise expire.
- (3) An order may not be made under subsection (1) if the time for execution of the warrant has passed.
- (4) This section does not apply to a warrant issued under a possession order made under Division 2.

355 Warrant of possession

- (1) A warrant of possession under this Part must—
 - (a) be in a form prescribed by rules made under the **Victorian Civil and Administrative Tribunal Act 1998**; and
 - (b) be directed—
 - (i) to a police officer; or

S. 355(1)(a)
amended by
No. 45/2002
s. 90.

S. 355(1)(b)(i)
amended by
No. 37/2014
s. 10(Sch.
item 144.2).

Residential Tenancies Act 1997
No. 109 of 1997
Part 7—Regaining possession—Possession orders and warrants

- S. 355(1)(d)
amended by
No. 52/1998
s. 236(q).
- (ii) to an authorised person; and
(c) give brief details of the possession order; and
(d) be signed by the principal registrar.
- (2) The warrant of possession authorises the person to whom it is directed—
- S. 355(2)(a)
amended by
No. 67/2010
s. 81(f)(i) (as
amended by
No. 36/2011
s. 38(2)).
- (a) to enter the rented premises, room and rooming house, building, site or caravan (as the case may be), by force if necessary; and
- S. 355(2)(b)
substituted by
No. 63/2005
s. 28.
- (b) with such assistance as is necessary—
- S. 355(2)(b)(i)
amended by
No. 67/2010
s. 81(f)(ii).
- (i) to compel all persons for the time being occupying the rented premises, room (other than a shared room), building, site or caravan (as the case may be) to vacate and give possession of them to the applicant for the order under which the warrant is issued; or
(ii) to compel any person named in the order to vacate a shared room.
- S. 355(3)
amended by
No. 67/2010
s. 81(f)(iii).
- (3) A warrant of possession does not authorise the person to whom it is directed to remove any goods from rented premises or a room in a rooming house, building, or a site or caravan.
- (4) Entry under a warrant of possession must not be made—
- (a) between the hours of 6 p.m. and 8 a.m.; or
(b) on a Sunday or public holiday.

- (5) The Minister may authorise any person or class of persons either generally or in a particular case to execute warrants of possession.

356 Lapsing of possession order and lapsing or cancellation of warrant of possession

- (1) A possession order under this Part is discharged if the applicant for the order does not—
- (a) in the case of an order under Division 2, within 30 days after the date of the order; or
 - (b) in any other case, within 6 months after the date of the order—
- apply for the issue of a warrant of possession.
- (2) A warrant of possession under this Part lapses if it is not executed—
- (a) subject to paragraph (b), within the time stated in the order; or
 - (b) if the Tribunal has extended the time within which a warrant may be executed, within the further time that the Tribunal by order allows.
- (3) The Tribunal may at any time cancel a warrant of possession issued under this Part.

357 Execution of warrant

As soon as practicable, but not later than 60 days after a warrant of possession is issued, the person to whom the warrant is addressed must—

- (a) return the warrant to the principal registrar; and
- (b) specify in writing whether the warrant has or has not been executed.

S. 357(a)
amended by
No. 52/1998
s. 236(q).

358 Offence to re-enter rooming house, site or caravan

S. 358(1)
amended by
No. 67/2010
ss 81(g), 141.

- (1) A person who is removed from a rooming house or in the case of a building in respect of which notice under section 289A was given, a building, under a warrant of possession must not re-enter and take up possession of a room in the rooming house or that building.

Penalty: 60 penalty units.

S. 358(2)
amended by
No. 67/2010
s. 141.

- (2) A person who is removed from a site or caravan under a warrant of possession must not re-enter and take up possession of the site or caravan.

Penalty: 60 penalty units.

S. 358(3)
inserted by
No. 67/2010
s. 37.

- (3) A person who is removed from a Part 4A site under a warrant of possession must not re-enter and take up possession of the Part 4A site.

Penalty: 20 penalty units.

Division 5—Sheriff's powers to remove caravans

S. 359
amended by
No. 52/1998
s. 236(q).

359 Removal of caravan from a caravan park

The principal registrar must notify the sheriff as soon as possible after a warrant of possession is returned if—

- (a) a resident and any other occupants have been removed from a site under the warrant of possession; and
- (b) the possession order under which the warrant of possession was issued directed the removal of the caravan on the site from the caravan park.

360 Sheriff's powers to remove

- (1) After receiving a notice under section 359, the sheriff must remove the caravan and goods in it from the caravan park and store the caravan and any goods in a safe place.

- (2) Subject to subsection (3), the sheriff may destroy or dispose of goods if they are—
 - (a) of no monetary value; or
 - (b) perishable foodstuffs; or
 - (c) dangerous.
- (3) If personal documents are left in a caravan removed in accordance with subsection (1), the sheriff may remove them but must not destroy or dispose of them, except in accordance with sections 361, 362 and 363.

361 What happens to personal documents?

If personal documents are left behind, the sheriff must—

- (a) store the documents for a period of 90 days; and
- (b) before the end of the 90 day storage period, cause a notice to be inserted in the prescribed form in a newspaper circulating generally throughout Victoria of the sheriff's intention to dispose of the personal documents at the end of the 90 day period.

362 Disposal of personal documents after 90 days

- (1) If notice has been given in accordance with section 361 and the personal documents have not been claimed by the former resident or any other person giving satisfactory evidence of the person's right to them by the end of the 90 day storage period, then at the end of that period, the sheriff may dispose of the personal documents in any manner that he or she thinks fit.
- (2) Nothing in this section affects the operation of any other Act or law affecting the destruction or disposition of the documents.

- (3) If the sheriff has disposed of personal documents in accordance with this section, the sheriff may apply to the Tribunal for compensation for the costs of removal and storage of the documents, including the publication of a notice under section 361.
- (4) An application under subsection (3) must be made within 6 months after the personal documents have been disposed of.

363 Reclaiming documents before disposal

The former resident or any other person giving satisfactory evidence of the person's right to personal documents may reclaim personal documents removed by the sheriff before they are disposed of in accordance with section 362 if he or she pays to the sheriff any reasonable costs in relation to the removal and storage of those documents, including the publication of a notice under section 361.

364 Rightful owner may claim caravan and goods

The former resident or any other person giving satisfactory evidence of the person's right to do so may reclaim the caravan or any goods (other than personal documents or goods to which section 360(2) applies) within 90 days of the caravan's removal from the caravan park on payment of reasonable costs incurred by the sheriff in removing and storing or paying for the removal and storage of the caravan or goods.

365 Sale of caravan and goods

- (1) If the caravan or goods (other than personal documents) are not reclaimed, the sheriff may sell the caravan or goods by a public auction advertised in a newspaper circulating generally throughout Victoria at least 14 days before the auction.

- (2) If the caravan or any goods are not sold at the public auction, the sheriff may dispose of the caravan or goods in any manner that he or she thinks fit.
- (3) The proceeds of the sale or disposal remaining after deducting the reasonable costs incurred in—
- (a) removing and storing or paying for the removal and storage of the caravan and any goods; and
 - (b) selling or attempting to sell and disposing of the caravan and any goods—
- must be dealt with as unclaimed money in accordance with Part 3 of the **Unclaimed Money Act 2008** as if the sheriff were a business to which that Part applies.
- (4) If the proceeds of the sale or disposal are insufficient to meet the reasonable costs incurred in—
- (a) removing and storing or paying for the removal and storage of the caravan and any goods; and
 - (b) selling or attempting to sell and disposing of the caravan and any goods—
- the sheriff may apply to the Tribunal for compensation for those costs.
- (5) An application under subsection (4) must be made within 6 months after the date of the sale or disposal under this section.

S. 365(3)
amended by
No. 44/2008
s. 114(2).

366 Tribunal may order compensation from Residential Tenancies Fund

- (1) On an application under section 362(3) or section 365(4), the Tribunal may—
 - (a) make an order for compensation; or
 - (b) dismiss the application.
- (2) Compensation in respect of an order made under this section must be paid from the Residential Tenancies Fund.

Part 8—Violence on certain premises

367 Definitions

In this Part—

managed high density building means a building which contains 2 or more rented premises and which has an on-site manager;

managed premises means—

- (a) a managed high density building; or
- (b) a rooming house; or
- (c) a caravan park; or
- (d) a Part 4A park—

and includes any common areas of that building or caravan park;

manager means on-site manager, rooming house owner, caravan park owner or site owner;

on-site manager in relation to a building, caravan park or Part 4A park, means a person whose duties include—

- (a) the security of the building, caravan park or Part 4A park; and
- (b) the day to day operational responsibility for the building, caravan park or Part 4A park; and
- (c) being present at the building, caravan park or Part 4A park or available to be present at least 7 hours a day, 5 days a week;

S. 367 def. of *managed premises* amended by No. 67/2010 s. 38(a)(b).

S. 367 def. of *manager* amended by No. 67/2010 s. 38(c).

S. 367 def. of *on-site manager* amended by No. 67/2010 s. 38(d).

S. 367 def. of
resident
substituted by
No. 67/2010
s. 38(e).

resident includes—

- (a) a tenant of rented premises in a managed high density building; and
- (b) a site tenant.

368 Manager may give person notice to leave—serious acts of violence

S. 368(1)
amended by
No. 45/2002
s. 91(1).

- (1) A manager of managed premises may give a resident a notice to leave the managed premises immediately if the manager has reasonable grounds to believe that—
 - (a) a serious act of violence by the resident has occurred on the managed premises; or
 - (b) the safety of any person on the managed premises is in danger from the resident.

S. 368(2)
amended by
No. 45/2002
s. 91(1).

- (2) A manager of managed premises may give a resident's visitor a notice to leave the premises immediately if the manager has reasonable grounds to believe that—
 - (a) a serious act of violence by the visitor has occurred on the managed premises; or
 - (b) the safety of any person on the managed premises is in danger from the resident's visitor.

- (3) A notice to leave under this section must be in the prescribed form.

S. 368(4)
inserted by
No. 45/2002
s. 91(2).

- (4) A notice to leave under this section must be given as soon as it is possible for the manager to safely do so after the serious act of violence has occurred or the safety of a person on the premises has been endangered.

368A Offence to give notice to leave or purported notice to leave without reasonable grounds

S. 368A
inserted by
No. 45/2002
s. 92,
amended by
No. 67/2010
s. 142.

A manager of managed premises must not give—

- (a) a notice to leave under section 368; or
- (b) a document which purports to be a notice to leave under section 368—

unless the manager has reasonable grounds to believe that—

- (c) a serious act of violence by a resident or a resident's visitor has occurred on the rented premises; or
- (d) the safety of any person on the managed premises is in danger from a resident or a resident's visitor.

Penalty: 60 penalty units.

369 Offence to remain on premises if given notice to leave

S. 369
amended by
No. 67/2010
s. 143.

A person who has been given a notice to leave managed premises under section 368 must not remain on the managed premises after receiving that notice.

Penalty: 20 penalty units.

370 What happens if a notice to leave is given?

S. 370
(Heading)
inserted by
No. 67/2010
s. 39(1).

- (1) If a resident is given a notice to leave managed premises under section 368, the tenancy agreement, residency right or site agreement of that resident in respect of the rented premises, room, site or Part 4A site in the managed premises is suspended.

S. 370(1)
amended by
No. 67/2010
s. 39(2)(3) (as
amended by
No. 36/2011
s. 38(1)).

S. 370(2)
amended by
Nos 45/2002
s. 93, 67/2010
s. 39(3) (as
amended by
No. 36/2011
s. 38(1)).

(2) Despite subsection (1), unless the Tribunal makes an order under section 376(1)(b), the resident is still required to pay—

- (a) any rent under that tenancy agreement, residency right or site agreement in respect of the period that the tenancy agreement, residency right or site agreement is suspended; and
- (b) in the case of a caravan in a caravan park, any hiring charge in respect of the period that the residency right is suspended.

371 How long does a suspension last?

A suspension under this Part remains in force—

- (a) until the end of 2 business days after it commences; or
- (b) if an application is made under section 374, until the Tribunal has heard and determined the application.

S. 372
amended by
No. 67/2010
ss 40, 144.

372 Offence to re-enter premises during suspension

A resident whose tenancy agreement, residency right or site agreement has been suspended under this Part must not enter the managed premises during the period that the suspension is in force.

Penalty: 20 penalty units.

S. 373
amended by
Nos 52/1998
s. 236(q),
67/2010 s. 145.

373 Notice to principal registrar

A manager who gives a resident a notice to leave managed premises under section 368, must give the principal registrar written notice of the giving of that notice to leave no later than the end of the next business day after the day on which the notice to leave was given.

Penalty: 60 penalty units.

374 Urgent applications to Tribunal

S. 374
(Heading)
inserted by
No. 67/2010
s. 41(1).

- (1) If a tenancy agreement, residency right or site agreement is suspended under this Part, the landlord, rooming house owner, caravan park owner or site owner (as the case may be) may apply to the Tribunal for an order that the tenancy agreement, residency right or site agreement be terminated.
- (2) An application under subsection (1) must be made before the end of 2 business days after the suspension of the tenancy agreement, residency right or site agreement.

S. 374(1)
amended by
No. 67/2010
s. 41(2)(3).

S. 374(2)
amended by
No. 67/2010
s. 41(3).

375 Tribunal must hear application urgently

The Tribunal must hear an application under section 374 within 2 business days after the application is made.

376 What can the Tribunal order?

- (1) After hearing an application under section 374, the Tribunal may—
- (a) if the Tribunal determines that it was appropriate to give the resident the notice to leave the managed premises—
- (i) make an order terminating the tenancy agreement, residency right or site agreement as at the date of that order; or
- (ii) if the Tribunal is satisfied that the circumstances giving rise to the giving of the notice to leave will not be repeated, order that the suspension of the tenancy agreement, residency right or site agreement cease and that the

S. 376(1)(a)(i)
amended by
No. 67/2010
s. 42(2).

S. 376(1)(a)(ii)
amended by
No. 67/2010
s. 42.

resident be allowed to resume occupation of the rented premises, room, site or Part 4A site under the tenancy agreement, residency right or site agreement; or

S. 376(1)(b)
amended by
No. 67/2010
s. 42.

(b) in any other case, order that the suspension of the tenancy agreement, residency right or site agreement cease and that the resident be allowed to resume occupation of the rented premises, room, site or Part 4A site under the tenancy agreement, residency right or site agreement.

(2) The Tribunal may make any ancillary or incidental orders that the Tribunal considers appropriate.

S. 376(3)
substituted by
No. 45/2002
s. 94,
amended by
No. 67/2010
s. 42(2).

(3) If the Tribunal orders under subsection (1)(b) that the suspension of the tenancy agreement, residency right or site agreement cease—

(a) the resident is not required to pay rent or hiring charges in respect of the period of the suspension; and

(b) the Tribunal must order that compensation be paid to the resident comprising—

(i) a refund of the rent or hiring charges paid during the period of the suspension; and

(ii) any reasonable expenses incurred by the resident relating to the period of suspension.

377 Offence to allow occupation of premises pending application or hearing

- (1) A landlord of rented premises in a managed high density building must not allow a person who is not a party to a tenancy agreement suspended under section 370 to lease or occupy the rented premises during the period of suspension.

S. 377(1)
amended by
No. 67/2010
s. 146.

Penalty: 60 penalty units in the case of a natural person;

300 penalty units in the case of a body corporate.

- (2) A rooming house owner must not allow a person who is not a party to a residency right suspended under section 370 to occupy the room in the rooming house to which that residency right applies during the period of suspension.

S. 377(2)
amended by
No. 67/2010
s. 146.

Penalty: 60 penalty units in the case of a natural person;

300 penalty units in the case of a body corporate.

- (3) A caravan park owner must not allow a person who is not a party to a residency right suspended under section 370 to occupy the site in the caravan park to which that residency right applies during the period of suspension.

S. 377(3)
amended by
No. 67/2010
s. 146.

Penalty: 60 penalty units in the case of a natural person;

300 penalty units in the case of a body corporate.

S. 377(3A)
inserted by
No. 67/2010
s. 43.

(3A) A site owner must not allow a person who is not a party to a site agreement suspended under section 370 to occupy the Part 4A site to which that site agreement applies during the period of suspension.

Penalty: 60 penalty units in the case of a natural person;
300 penalty units in the case of a body corporate.

S. 377(4)
inserted by
No. 63/2005
s. 29.

(4) Despite subsection (2), a rooming house owner may permit a new resident to occupy a shared room in the rooming house if the room capacity of the room (including the resident with the suspended residency right) would not be exceeded.

S. 377A
(Heading)
amended by
No. 67/2010
s. 44(1).
S. 377A
inserted by
No. 45/2002
s. 95.

377A Notice to leave prohibited if notice to vacate under section 244, 279, 303 or 317Y already given

A manager is not entitled to give a notice to leave under section 368 in respect of an act or omission if—

- (a) a landlord has given a notice to vacate under section 244 in respect of that act or omission; or
- (b) a rooming house owner has given a notice to vacate under section 279 in respect of that act or omission; or
- (c) a caravan park owner has given a notice to vacate under section 303 in respect of that act or omission; or
- (d) a site owner has given a notice to vacate under section 317Y in respect of that act or omission.

S. 377A(c)
amended by
No. 67/2010
s. 44(2)(a).

S. 377A(d)
inserted by
No. 67/2010
s. 44(2)(b).

Part 9—Goods left behind by tenants, residents and site tenants

Pt 9 (Heading)
amended by
No. 67/2010
s. 45.

Division 1—Preliminary

378 Application of this Part

This Part applies if—

- (a) in the case of rented premises, the tenancy agreement has been terminated and goods have been left behind;
- (b) in the case of a rooming house, a resident has vacated a room and goods have been left behind;
- (c) in the case of a caravan park, the caravan park owner, caravan park mortgagee, caravan owner or caravan mortgagee has taken possession of a caravan which a resident has vacated and goods have been left behind;
- (d) in the case of a Part 4A site, the site agreement has been terminated and goods have been left behind.

S. 378(c)
amended by
No. 67/2010
s. 46(a).

S. 378(d)
amended by
No. 67/2010
s. 46(b).

379 Definitions

In this Part—

owner of premises means—

- (a) in relation to rented premises in respect of which a tenancy agreement has been terminated, the former landlord; and
- (b) in relation to a rooming house, the rooming house owner; and
- (c) in relation to a caravan or caravan park, the caravan park owner, caravan park mortgagee, caravan owner or caravan mortgagee; and

S. 379 def. of
*owner of
premises*
amended by
No. 67/2010
s. 47(1).

- (d) in relation to a Part 4A site, the site owner;

S. 379 def. of
stored goods
amended by
No. 67/2010
s. 47(2).

stored goods means—

- (a) in relation to rented premises in respect of which a tenancy agreement has been terminated, goods left behind on rented premises which are stored in accordance with section 386;
- (b) in relation to a rooming house, goods left behind in a rooming house, of which a rooming house owner must take reasonable care in accordance with section 387;
- (c) in relation to a caravan or caravan park, goods left behind in a caravan, of which a caravan park owner, caravan park mortgagee, caravan owner or caravan mortgagee must take reasonable care in accordance with section 388;
- (d) in relation to a Part 4A site, goods left behind on the Part 4A site of which a site owner must take reasonable care in accordance with section 388A.

Division 2—Personal documents left behind

380 What happens if personal documents are left behind?

S. 380
(Heading)
inserted by
No. 67/2010
s. 48(1).
S. 380
amended by
No. 67/2010
s. 48(2).

If a tenant, resident or site tenant leaves behind personal documents, the owner of premises—

S. 380(a)
amended by
No. 45/2002
s. 66(a).

- (a) must take reasonable care of the personal documents for a period of 90 days; and

(b) may remove but must not destroy or dispose of the personal documents, except in accordance with this Part; and

(c) must take reasonable steps to notify the former tenant, resident or site tenant as to when and from where the documents may be collected.

* * * * *

S. 380(c)
amended by
Nos 45/2002
s. 66(b),
67/2010
s. 48(2).

S. 380(d)
repealed by
No. 45/2002
s. 66(c).

381 Disposal of personal documents after 90 days

S. 381
(Heading)
inserted by
No. 45/2002
s. 67(1).

(1) If personal documents have not been reclaimed by a person who has a lawful right to the documents by the end of the 90 day period referred to in section 380(a), then at the end of that period, the owner of premises may dispose of the personal documents.

S. 381(1)
amended by
No. 45/2002
s. 67(2).

(2) Nothing in this section affects the operation of any other Act or law affecting the destruction or disposition of the documents.

Note

It may be an offence under certain legislation of the State and Commonwealth to destroy certain documents.

Note to
s. 381(2)
inserted by
No. 45/2002
s. 67(3).

(3) An owner of premises may recover the costs of removal, taking reasonable care and notification in relation to personal documents from the Residential Tenancies Fund.

382 Reclaiming personal documents before disposal

S. 382(1)
amended by
No. 67/2010
s. 49.

- (1) A person who has a lawful right to the personal documents may reclaim the personal documents left behind at any time before they are disposed of in accordance with section 381 if he or she pays the owner of premises the reasonable costs in relation to the notification of the former tenant, resident or site tenant and the removal and taking reasonable care of those documents.

S. 382(2)
amended by
No. 67/2010
s. 147.

- (2) If a person who has a lawful right to personal documents reclaims the documents and pays the costs set out in subsection (1), the owner of premises must not refuse to give the documents to that person.

Penalty: 60 penalty units in the case of a natural person;

300 penalty units in the case of a body corporate.

Division 3—Goods left behind

383 Application of Division

This Division does not apply to personal documents.

384 Disposal of certain goods left behind

- (1) If goods have been left behind, the owner of premises may remove and destroy or dispose of the goods if—
- (a) they are of no monetary value; or
 - (b) they are perishable foodstuffs; or
 - (c) they are dangerous.

- | | |
|---|--|
| (2) If goods of monetary value have been left behind, the owner of premises may remove and destroy or dispose of those goods if the total estimated cost of the removal, storage and sale of all those goods combined is greater than the total monetary value of all those goods combined. | S. 384(2)
substituted by
No. 45/2002
s. 68. |
| (3) Subsection (2) does not apply to goods to which subsection (1) applies. | S. 384(3)
inserted by
No. 45/2002
s. 68. |
| (4) Nothing in this section affects the operation of any other Act or law affecting the removal, destruction or disposal of goods. | S. 384(4)
inserted by
No. 45/2002
s. 68. |

Note

Other legislation of the State and Commonwealth may deal with the disposal of goods for example, the **Dangerous Goods Act 1985**.

385 Request to Director to state whether goods can be removed and destroyed or disposed of

An owner of premises may request the Director in writing to give an opinion as to whether or not particular goods are goods which may be removed and destroyed or disposed of under section 384.

386 What must a landlord do about goods which are left behind?

- (1) A former landlord must store goods (other than goods which may be removed and destroyed or disposed of under section 384) which are left behind on the premises in a safe place and manner for not less than 28 days.
- (2) Before the end of 7 days after goods are stored under subsection (1), the former landlord—
 - (a) if the former tenant has given a forwarding address, must send a notice to the former tenant in the prescribed form at that address;
or

- (b) if the former tenant has not given a forwarding address, must cause notice in the prescribed form to be inserted in a newspaper circulating generally throughout Victoria.

387 What must a rooming house owner do about goods left behind?

A rooming housing owner must—

- (a) take reasonable care of any goods (other than goods which may be removed and destroyed or disposed of under section 384) left behind when a resident vacates a room; and
- (b) take reasonable steps to notify a former resident as to when and from where the goods can be collected.

388 What must a caravan park owner etc. do about goods left behind?

A caravan park owner, caravan park mortgagee, caravan owner or caravan mortgagee who takes possession of a caravan vacated by a resident must—

- (a) take reasonable care of any goods (other than goods which may be removed and destroyed or disposed of under section 384) left behind when the resident vacates the caravan; and
- (b) take reasonable steps to notify the former resident as to when and from where the goods left behind can be collected.

388A What must a site owner or Part 4A site agreement mortgagee do about goods left behind?

S. 388A
inserted by
No. 67/2010
s. 50.

A site owner who takes possession of a Part 4A site vacated by a site tenant must—

- (a) take reasonable care of any goods (other than goods which may be removed and destroyed or disposed of under section 384) left behind when the site tenant vacates the Part 4A site; and
- (b) take reasonable steps to notify the former site tenant as to when and from where the goods left behind can be collected.

389 Rightful owner may reclaim stored goods before sale

- (1) A person who has a lawful right to stored goods may reclaim those goods at any time before they are sold if he or she pays the owner of premises the reasonable costs incurred—

- (a) in the case of a former landlord or site owner—

S. 389(1)(a)
amended by
No. 67/2010
s. 51(a).

- (i) in notifying the former tenant or site tenant; and

S. 389(1)(a)(i)
amended by
No. 67/2010
s. 51(b).

- (ii) in the removal and storage of the goods; and

- (iii) in organising the sale of the goods; or

- (b) in the case of a rooming house owner, caravan park owner, caravan park mortgagee, caravan owner or caravan mortgagee—

- (i) in notifying the former resident; and

- (ii) in storing the goods; and

(iii) in organising the sale of the goods.

S. 389(2)
amended by
No. 67/2010
s. 148.

(2) If a person who has a lawful right to stored goods pays the costs set out in subsection (1), the owner of premises must not refuse to give the goods to that person.

Penalty: 20 penalty units.

S. 390
amended by
No. 67/2010
s. 52.

390 What if a caravan owned by a resident is abandoned on site?

If a caravan owned by a resident has been abandoned and an abandonment order has been made under section 301, the caravan park owner, caravan owner, caravan park mortgagee or caravan mortgagee may deal with the caravan in accordance with this Part, as if the caravan were stored goods.

S. 390A
inserted by
No. 67/2010
s. 53.

390A What if a Part 4A dwelling owned by a site tenant is abandoned on site?

If a Part 4A dwelling owned by a site tenant has been abandoned and an abandonment order has been made under section 317W or a possession order has been made under section 324A, the site owner may deal with the Part 4A dwelling in accordance with this Part, as if the Part 4A dwelling were stored goods.

391 Sale of stored goods

If stored goods left behind are not reclaimed within 28 days after the date on which they became stored goods, the owner of premises must cause the goods to be sold by public auction as soon as practicable.

392 Sale of stored goods by public auction to be advertised

The owner of premises must advertise the sale of stored goods by public auction in the prescribed form in a newspaper circulating generally throughout Victoria at least 14 days before the auction.

393 Entitlement to removal and storage costs

(1) If stored goods are sold by public auction within 8 weeks after the date on which they became stored goods, the owner of premises is entitled to retain out of the proceeds of sale—

(a) the reasonable costs incurred in—

(i) removing and storing the goods or taking reasonable care of the goods (as the case may be); and

(ii) trying to notify the former tenant or resident; and

(iii) selling the goods; and

(b) any money owed to the owner of premises under a Tribunal determination.

(2) An owner of premises must deal with any money left over after any deductions under subsection (1) in accordance with Part 3 of the **Unclaimed Money Act 2008** as if the owner of premises were a business to which that Part applies.

S. 393(2)
amended by
No. 44/2008
s. 114(3).

(3) If stored goods are offered for sale at a public auction in accordance with section 391 and are not sold, the owner of premises may dispose of the stored goods.

S. 393(3)
substituted by
No. 45/2002
s. 69(1).

(4) An owner of premises is not liable to anyone for loss or damage caused as a result of—

S. 393(4)
inserted by
No. 45/2002
s. 69(1).

(a) the sale of stored goods in accordance with this Part; or

- (b) the disposal of stored goods in accordance with subsection (3).

394 Purchaser takes good title

A purchaser of stored goods sold in accordance with this Part has good title unless he or she has notice of—

S. 394(a)
amended by
No. 67/2010
s. 54.

- (a) a defect in title or want of title in the former tenant, former resident or former site tenant;
or
(b) a failure of the owner of premises to comply with this Part in relation to the sale of the goods.

Division 4—Orders of Tribunal

395 What if proceeds of sale are not sufficient to cover costs?

S. 395(2)
amended by
No. 67/2010
s. 55.

- (1) If the proceeds of sale of stored goods are not sufficient to cover the owner of premises' reasonable costs of removal, storage, notification and sale, the owner of premises may apply to the Tribunal for compensation.
(2) An application under this section must be made within 6 months after the date of termination of the tenancy agreement, residency right or site agreement.

S. 395(3)
amended by
No. 45/2002
s. 69(2).

- (3) In this section *stored goods* includes goods stored in reliance on a written statement of the Director under section 385 that in his or her opinion particular goods are goods which may not be removed and destroyed or disposed of under section 384.

396 What if goods or documents are disposed of in contravention of this Part?

S. 396
amended by
No. 67/2010
s. 56.

If an owner of premises destroys, disposes of or sells a former tenant's, former resident's or former site tenant's goods or personal documents, otherwise than in accordance with this Part, the former tenant, former resident, former site tenant or a person who has a lawful right to those goods or documents may apply to the Tribunal for compensation.

397 What if goods or documents are wrongfully retained?

S. 397
amended by
No. 67/2010
s. 57.

If an owner of premises wrongfully retains and refuses to give up goods or personal documents left behind, the former tenant, former resident, former site tenant or a person who has a lawful right to those goods or documents may apply to the Tribunal for an order for the return of the goods or personal documents or for compensation or both.

398 What if goods or documents are damaged or lost?

S. 398
amended by
No. 67/2010
s. 58.

If the owner of premises wilfully or recklessly damages or loses stored goods or personal documents, a former tenant, former resident, former site tenant or a person who has a lawful right to those goods or documents may apply to the Tribunal for compensation.

399 What if stored goods have been sold in accordance with this Part?

S. 399
amended by
Nos 44/2008
s. 114(4),
67/2010 s. 59.

If an owner of premises has sold a former tenant's, former resident's or former site tenant's stored goods in accordance with this Part, the former tenant, former resident, former site tenant or a person who has a lawful right to those goods is not entitled to the return of the goods but may apply to the Tribunal for a declaration that the

money dealt with in accordance with Part 3 of the
Unclaimed Money Act 2008 should be paid to
that person.

S. 399A
inserted by
No. 67/2010
s. 82.

**399A Director may make application without consent—
former rooming house residents**

- (1) The Director may make an application under section 396, 397 or 399 on behalf of the former resident of a rooming house or person who has a lawful right to the goods or documents referred to in section 396, 397 or 399 (as the case requires) without the consent of the former resident or person who has a lawful right if the Director is satisfied that it is in the public interest to do so.
- (2) This section applies subject to section 115 of the **Australian Consumer Law and Fair Trading Act 2012**.

S. 399A(2)
amended by
No. 23/2016
s. 25(1).

**400 What if personal documents are disposed of in
accordance with section 381?**

- (1) If the owner of premises has disposed of personal documents in accordance with section 381, the owner of premises may apply to the Tribunal for compensation for the costs of removal, taking reasonable care of the documents and notification in relation to those documents.
- (2) An application under this section must be made within 6 months after the date of termination of the tenancy agreement, residency right or site agreement.

S. 400(2)
amended by
No. 67/2010
s. 60.

401 What orders can the Tribunal make?

On an application under this Division, the
Tribunal may—

- (a) in the case of an application under section 395, 396, 398 or 400, make an order for compensation; or

- (b) in the case of an application under section 397—
 - (i) make an order for the return of the goods or personal documents; or
 - (ii) make an order for compensation; or
 - (iii) make an order for both compensation and the return of the goods or personal documents; or
- (c) in the case of an application under section 399, make a declaration in accordance with that section; or
- (d) dismiss the application.

402 Payment of compensation to owner who relies on Director's statement

- (1) The Tribunal may make an order for compensation to be paid to an owner of premises if—
 - (a) the Tribunal is satisfied that the owner of premises has relied on the Director's statement of opinion under section 385; and
 - (b) the owner of premises has removed, destroyed or disposed of the goods left behind; and
 - (c) the owner of premises is subsequently found liable to the owner of the goods left behind.
- (2) The compensation must be for an amount equal to the amount for which the owner of premises is found liable together with reasonable costs in relation to the action.

403 When is compensation payable out of the Residential Tenancies Fund?

Compensation in respect of the following orders must be paid from the Residential Tenancies Fund—

- (a) an order under section 401 in respect of an application under section 395 or 400; or
- (b) an order under section 402.

Part 10—Bonds and the Residential Tenancies Bond Authority

Division 1—Interpretation

404 Definitions

In this Part—

amount of bond includes a partial or full amount of a bond;

S. 404 def. of *amount of bond* inserted by No. 47/2012 s. 9(a).

bond in Divisions 3 and 4, includes an amount or the total of the amounts (if any) which are required to be added to the bond pursuant to section 439;

bond lodgment form means a form completed and signed by a landlord and tenant in accordance with section 405 for the purposes of lodgment of an amount of bond;

S. 404 def. of *bond lodgment form* inserted by No. 47/2012 s. 9(a).

bond substitution form means a form completed and signed by a tenant in accordance with section 410B for the purposes of lodgment of a substitute bond under that section;

S. 404 def. of *bond substitution form* inserted by No. 47/2012 s. 9(a).

Director of Housing voucher means a voucher issued by the Director of Housing or an agent of the Director of Housing for payment of an amount of bond on behalf of a tenant or site tenant;

S. 404 def. of *Director of Housing voucher* inserted by No. 93/2003 s. 4, amended by No. 67/2010 s. 61(a).

S. 404 def. of
landlord
amended by
Nos 67/2010
s. 61(b),
47/2012
s. 9(b).

landlord includes—

- (a) rooming house owner;
- (b) caravan park owner;
- (c) caravan owner;
- (ca) site owner;
- (d) in Divisions 3 and 4, former landlord, former rooming house owner, former caravan park owner, former caravan owner and former site owner;
- (e) agent of a landlord or a person referred to in paragraphs (a) to (d);

rent includes hiring charge;

S. 404 def. of
rented premises
amended by
No. 67/2010
s. 61(c).

rented premises includes room, site, caravan and Part 4A site;

S. 404 def. of
tenancy agreement
amended by
No. 67/2010
s. 61(d).

tenancy agreement includes residency right and site agreement;

S. 404 def. of
tenant
amended by
No. 67/2010
s. 61(e)(f).

tenant includes—

- (a) resident; and
- (ab) site tenant; and
- (b) in Divisions 3 and 4, former tenant, former resident and former site tenant.

Division 2—Payment of bonds to Residential Tenancies Bond Authority

405 Bond lodgment form

S. 405
(Heading)
inserted by
No. 47/2012
s. 10(1).

- (1) A landlord who receives an amount of bond from a tenant must at the time the amount of bond is paid—

S. 405(1)
amended by
Nos 67/2010
s. 149, 47/2012
s. 10(2).

- (a) complete and sign a bond lodgment form containing the prescribed information; and
- (b) give the form to the tenant to sign.

Penalty: 10 penalty units.

- (2) If the Director of Housing or an agent of the Director of Housing has paid an amount of bond on behalf of the tenant, the bond lodgment form must state that fact.

S. 405(2)
amended by
No. 93/2003
s. 5.

- (3) The tenant must sign the completed bond lodgment form on payment of the amount of bond.

S. 405(3)
amended by
No. 47/2012
s. 10(3).

- (4) On the signing by the tenant of the bond lodgment form, the landlord must give a copy of that form to the tenant.

S. 405(4)
amended by
Nos 45/2002
s. 70(1),
67/2010 s. 149.

Penalty: 10 penalty units.

406 Duty to pay bond to Authority

S. 406
amended by
Nos 45/2002
s. 70(2),
67/2010 s. 150,
47/2012 s. 11.

If a landlord receives an amount of bond from a tenant, the landlord must, within 10 business days after the amount of bond is received, give the amount of bond to the Authority together with the completed bond lodgment form.

Penalty: 60 penalty units.

407 Receipt for bond

S. 407(1)
amended by
No. 47/2012
s. 12(a).

- (1) The Authority, within 7 days after receiving an amount of bond from a landlord, must give a receipt containing the prescribed information to—

S. 407(1)(b)
amended by
No. 47/2012
s. 12(b).

- (a) the landlord; and
(b) the tenant who paid the amount of bond; and

S. 407(1)(c)
amended by
No. 93/2003
s. 6.

- (c) if an amount of bond was paid on behalf of the tenant by the Director of Housing or an agent of the Director of Housing, the Director of Housing.

- (2) The receipt may be given in the manner determined by the Authority.

S. 408
amended by
No. 47/2012
s. 13.

408 Bond held on trust

A landlord who receives an amount of bond from a tenant holds the amount of bond on trust for the tenant until the amount of bond is paid to the Authority.

409 What if the landlord is late in lodging the bond?

S. 409(1)
amended by
No. 45/2002
s. 71.

- (1) A tenant may notify the Authority if the tenant does not receive a receipt from the Authority within 15 business days after giving the amount of bond to the landlord.

S. 409(2)
amended by
No. 47/2012
s. 14.

- (2) If the landlord gives an amount of bond to the Authority after the tenant notifies the Authority under subsection (1) in respect of that amount of bond, the amount of bond is deemed for the purposes of this Part to be lodged on the date that the notice is given.

410 Payment of bond into Residential Bonds Account

The Authority must pay all money it receives under this Division into the Residential Bonds Account.

410A Payment of bond by cheque, Director of Housing voucher or money order

S. 410A
(Heading)
amended by
No. 93/2003
s. 7(1).

S. 410A
inserted by
No. 45/2002
s. 72.

- (1) Without limiting any manner in which an amount of bond may be paid, for the purposes of this Division, a landlord receives an amount of bond from a tenant if the tenant gives the landlord the amount of bond—

S. 410A(1)
substituted by
No. 93/2003
s. 7(2),
amended by
No. 47/2012
s. 15.

- (a) in the form of a cheque made payable to the Authority; or
- (b) in the form of a money order made payable to the Authority; or
- (c) in the form of a Director of Housing voucher; or
- (d) in a combination of 2 or more forms specified in paragraphs (a), (b) and (c).

- (2) Despite anything to the contrary in this Division, a tenant who gives a landlord a cheque for an amount of bond made payable to the Authority is not to be taken to have paid an amount of bond if the cheque is not honoured on its presentation.

S. 410A(2)
amended by
No. 47/2012
s. 15(a).

410B Payment of substitute bond

- (1) A tenant under a tenancy agreement may substitute an amount of bond paid by the tenant and held by the Authority in relation to that tenancy agreement with an equivalent amount of bond paid on behalf of the tenant by the Director

S. 410B
inserted by
No. 47/2012
s. 16.

of Housing or an agent of the Director of Housing (whether in the form of a Director of Housing voucher or otherwise).

- (2) For the purposes of subsection (1), a tenant must—
 - (a) complete and sign a bond substitution form containing the prescribed information; and
 - (b) give the substitute bond to the Authority together with the completed bond substitution form.
- (3) The Authority, within 7 days after receiving a substitute bond, must give a receipt to—
 - (a) the landlord under the tenancy agreement; and
 - (b) the tenant; and
 - (c) the Director of Housing.
- (4) A receipt under subsection (3) must—
 - (a) confirm that a bond substitution has been effected; and
 - (b) specify the amount of bond substituted; and
 - (c) contain the prescribed information.
- (5) The receipt may be given in the manner determined by the Authority.

Division 3—Payment out of bonds

411 Payment out of bonds

The Authority must not pay out an amount of bond under this Part except—

- (a) in accordance with an application for a refund made by the landlord and the tenant; or

- | | |
|--|--|
| (ab) in accordance with section 411C; or | S. 411(ab)
inserted by
No. 47/2012
s. 17(a). |
| (b) in accordance with a determination of the Tribunal; or | |
| (c) in accordance with an order of a court; or | S. 411(c)
amended by
No. 93/2003
s. 8(a). |
| (d) in the case of an amount of bond paid by the Director of Housing or an agent of the Director of Housing on behalf of a tenant, in accordance with— | S. 411(d)
inserted by
No. 93/2003
s. 8(b). |
| (i) paragraph (b) or (c); or | |
| (ii) section 411A or 411B; or | S. 411(d)(ii)
amended by
No. 47/2012
s. 17(b). |
| (iii) section 413(1). | S. 411(d)(iii)
amended by
No. 47/2012
s. 17(c). |

411A Payment out of certain Director of Housing bonds held on 30 June 2003

S. 411A
inserted by
No. 93/2003
s. 9.

- (1) This section applies if—
- (a) the Authority, on 30 June 2003, holds an amount of bond paid by the Director of Housing or an agent of the Director of Housing on behalf of a tenant; and
 - (b) the Authority receives a new bond (whether before, on or after the commencement of section 9 of the **Residential Tenancies (Amendment) Act 2003**) in relation to a tenancy agreement for the same premises to which the amount of bond referred to in paragraph (a) relates; and

- (c) no application for a refund of the amount of bond referred to in paragraph (a) is made in accordance with section 413(1) or 413(1A) within 12 months of the date on which the Authority receives the new bond referred to in paragraph (b).
- (2) The Authority may pay to the Director of Housing the amount of bond referred to in subsection (1)(a).
- (3) If, after the Authority pays an amount under subsection (2), the Authority holds a remaining amount of bond in relation to the tenancy agreement for which the amount of bond referred to in subsection (1)(a) was paid, the Authority may pay to the tenant the remaining amount of bond.
- (4) This section does not apply on or after the commencement of section 411B.

S. 411A(4)
inserted by
No. 47/2012
s. 18.

S. 411B
inserted by
No. 47/2012
s. 19.

411B Payment out of Director of Housing bonds generally

- (1) This section applies if—
 - (a) the Authority holds an amount of bond paid by the Director of Housing or an agent of the Director of Housing on behalf of a tenant; and
 - (b) the Authority receives a new amount of bond in relation to a tenancy agreement—
 - (i) for the same premises to which the amount of bond referred to in paragraph (a) relates; and
 - (ii) from or on behalf of a tenant other than the tenant referred to in paragraph (a); and

- (c) no application for a refund of the amount of bond referred to in paragraph (a) is made in accordance with section 413(1) within 12 months of the date on which the Authority receives the new bond referred to in paragraph (b).
- (2) The Authority may pay to the Director of Housing the amount of bond referred to in subsection (1)(a).
- (3) After the Authority pays an amount under subsection (2), if the Authority holds a remaining amount of bond in relation to the tenancy agreement for which the amount of bond referred to in subsection (1)(a) was paid, the Authority may pay to the tenant the remaining amount of bond.

411C Refund of amount of substitute bond

If the Authority receives a substitute bond under section 410B, the Authority must pay to the tenant under the tenancy agreement to which the substitute bond relates the amount of bond held by the Authority that the substitute bond replaces.

**S. 411C
inserted by
No. 47/2012
s. 20.**

412 Payment out by agreement

- (1) The Authority must pay an amount of bond in accordance with an application under this section.
- (2) A landlord and a tenant may apply jointly to the Authority for a refund of the bond paid in respect of a tenancy agreement.
- (3) The application must be made in the form and manner approved by the Director.
- (4) The application may request that the bond be apportioned between the landlord and the tenant.

**S. 412(3)
amended by
No. 45/2002
s. 73(1).**

S. 412(5)
amended by
No. 47/2012
s. 21(1).

- (5) If an amount of bond is to be paid to the landlord, the application must be signed by the tenant not earlier than 7 days before the termination date in respect of the tenancy agreement.

S. 412(5A)
inserted by
No. 47/2012
s. 21(2).

- (5A) A landlord must not request or obtain a tenant's signature to an application under this section if the application does not specify—
- (a) the amount of bond to be refunded; and
 - (b) the apportionment (if any) of that amount.

Penalty: 20 penalty units.

S. 412(6)
amended by
No. 93/2003
s. 10.

- (6) This section does not apply if the amount of bond was paid on behalf of a tenant by the Director of Housing or an agent of the Director of Housing.

S. 413
(Heading)
inserted by
No. 47/2012
s. 22(1).

413 Payment to Director of Housing

S. 413(1)
amended by
No. 47/2012
s. 22(2).

- (1) The Authority must pay an amount of bond to the Director of Housing if the landlord under the tenancy agreement in respect of which the amount of bond was paid applies to the Authority for payment of that amount to the Director of Housing.

S. 413(1A)
inserted by
No. 93/2003
s. 11(1),
repealed by
No. 47/2012
s. 22(3)(a).

* * * * *

S. 413(2)
amended by
No. 45/2002
s. 73(2).

- (2) The application must be made in a form and manner approved by the Director.

* * * * *

S. 413(3)
inserted by
No. 93/2003
s. 11(2),
repealed by
No. 47/2012
s. 22(3)(b).

413A Authority to notify Director of Housing on receipt of new amount of bond

S. 413A
(Heading)
amended by
No. 47/2012
s. 23(1).

As soon as practicable after receiving a new amount of bond from a landlord in respect of a tenancy agreement for the same premises for which the Authority already holds an amount of bond paid by the Director of Housing or an agent of the Director of Housing on behalf of a tenant, the Authority must notify the Director of Housing that the Authority has received a new amount of bond in respect of a tenancy agreement for those premises.

S. 413A
inserted by
No. 93/2003
s. 12,
amended by
No. 47/2012
s. 23(2).

414 Application to Tribunal by landlord

- (1) A landlord may apply to the Tribunal under this section if—
- (a) the tenant has delivered up vacant possession of, or abandoned the rented premises; and
 - (b) an amount of rent has accrued due and is unpaid; and
 - (c) after making all reasonable inquiries, the current address of the tenant is unknown to the landlord.
- (2) An application under this section must be made within 10 business days after—
- (a) the tenant delivers up vacant possession of the rented premises; or
 - (b) the landlord becomes aware that the tenant has abandoned the rented premises.

S. 414(1)
amended by
No. 52/1998
s. 236(s)(i).

S. 414(2)
repealed by
No. 52/1998
s. 236(s)(ii),
new s. 414(2)
inserted by
No. 45/2002
s. 74(1).

S. 414(3)
repealed by
No. 45/2002
s. 74(2).

* * * * *

S. 415
substituted by
No. 52/1998
s. 237.

415 Determination of application

- (1) If an application is made under section 414 and the Tribunal is satisfied that it is proper to do so, the Tribunal must—
 - (a) make a determination of the amount of rent owing to the landlord by the tenant at the date of the application; and
 - (b) make an order directing the Authority to pay out an amount of bond to or on account of the landlord in respect of the rent owing.
- (2) The Tribunal may make a determination and order under subsection (1) without a hearing whether or not the parties agree to dispense with the hearing.
- (3) The Tribunal's powers under this section are exercisable by the principal registrar.

S. 416
(Heading)
inserted by
No. 93/2003
s. 13(1).

416 Application to Tribunal by tenant or Director of Housing

- (1) A tenant may apply to the Tribunal for a determination directing the Authority to pay out an amount of bond to or on account of the tenant if the tenant is unable to obtain the landlord's agreement to make an application to the Authority for a refund.
- (2) The Tribunal cannot determine an application under this section until the tenant has vacated the rented premises.
- (3) An application may be made under this section by the Director of Housing instead of the tenant if an amount of bond was paid on behalf of a tenant by the Director of Housing or an agent of the Director of Housing.

S. 416(3)
amended by
No. 93/2003
s. 13(2).

417 Application to Tribunal by landlord

- (1) A landlord may apply to the Tribunal for a determination directing the Authority to pay an amount of bond to or on account of the landlord if—
 - (a) the landlord is unable to obtain the tenant's agreement to make an application to the Authority for a refund; and
 - (b) the landlord considers that the landlord is entitled under section 418 or 419 to a refund of that amount of bond.
- (2) An application under this section must be made within 10 business days after—
 - (a) the tenant delivers up vacant possession of the rented premises; or
 - (b) the landlord becomes aware that the tenant has abandoned the rented premises.

S. 417(2)
amended by
No. 45/2002
s. 75.

418 Application by landlord where rent unpaid

A landlord may apply to the Tribunal under section 417 if—

- (a) the tenant has delivered up vacant possession of, or abandoned, the rented premises; and
- (b) an amount of rent has accrued due and is unpaid.

419 Application by landlord on other grounds

- (1) A landlord may apply to the Tribunal under section 417 if the landlord believes that the landlord is entitled to an amount of bond as compensation for loss or damage suffered by the landlord on account of any one or more of the following—

- (a) damage caused to the rented premises or common areas by the tenant or the tenant's visitor, other than fair wear and tear;
- (b) any act or omission of the tenant or the tenant's visitor, other than fair wear and tear, that occasioned the loss of goods belonging to the landlord;
- (c) the failure by the tenant to keep the rented premises in a reasonably clean condition, fair wear and tear excepted;
- (d) the abandonment of the rented premises by the tenant;
- (e) the liability of the landlord for charges payable by the tenant that are or may be recoverable by the person to whom they are owed from the landlord.

S. 419(2)
repealed by
No. 52/1998
s. 238(a), new
s. 419(2)
inserted by
No. 47/2019
s. 95.

- (2) A landlord is not entitled to claim an amount of bond for an amount owing or payable to the landlord under an agreement referred to in section 53AA.

420 Determination by Tribunal

The Tribunal must determine any application made to it under section 416 or 417.

421 Bond paid by Director of Housing

S. 421(1)
amended by
No. 93/2003
s. 14(1).

- (1) The Director of Housing is a party to any proceeding before the Tribunal in relation to an amount of bond which was paid on behalf of a tenant by the Director of Housing or an agent of the Director of Housing.

S. 421(2)
repealed by
No. 52/1998
s. 238(b).

* * * * *

(3) The Authority must pay to the Director of Housing or an agent of the Director of Housing and not to the tenant any amount of bond to which the tenant is entitled under this Part if—

- (a) the bond lodgment form or bond substitution form states that the amount of bond was paid on behalf of the tenant by the Director of Housing or an agent of the Director of Housing; or
- (b) the Director of Housing advises the Authority in writing that the amount of bond was paid on behalf of a tenant by the Director of Housing or an agent of the Director of Housing.

S. 421(3)(a)
amended by
Nos 93/2003
s. 14(2),
47/2012 s. 24.

S. 421(3)(b)
amended by
No. 93/2003
s. 14(3).

422 Unclaimed money

S. 422
amended by
No. 44/2008
s. 114(5).

If the Authority is required under this Part to pay to a person the amount or part of the amount of a bond but is unable to do so because the whereabouts of the person are unknown to the Authority, the amount or part must be dealt with as unclaimed money in accordance with Part 3 of the **Unclaimed Money Act 2008** as if the Authority were a business to which that Part applies.

423 Prohibition of claims

- (1) No further claim lies against the Authority, the Residential Bonds Account or the Residential Bonds Investment Income Account in respect of an amount of bond once the Authority has in good faith and in accordance with this Part paid that amount out of those Accounts.
- (2) Despite subsection (1), the Authority may in its absolute discretion, pay as compensation to a person an amount not exceeding the amount of bond paid out if the Authority is satisfied that the person would have been entitled to a refund if the

S. 423(2)
amended by
Nos 45/2002
s. 76, 47/2012
s. 25.

amount of bond had not been paid out to another person on the fraudulent application of that other person.

Division 4—General provisions relating to bonds

424 Notice of assignment or transfer by landlord

S. 424(1)
amended by
Nos 67/2010
s. 151, 47/2012
s. 26.

- (1) If a landlord assigns or transfers the landlord's rights and duties under a tenancy agreement to another person, the landlord and the person to whom the rights and duties are assigned or transferred must notify the Authority in accordance with this section of that assignment or transfer if an amount of bond has been paid in relation to the tenancy agreement.

Penalty: 20 penalty units.

- (2) A notice under subsection (1) must—
- (a) contain the prescribed information; and
 - (b) be signed by the landlord and the person to whom the rights and duties are assigned or transferred; and
 - (c) be given to the Authority within 5 days after the assignment or transfer takes effect.

S. 424(3)
amended by
No. 67/2010
s. 151.

- (3) The landlord must give the tenant under the tenancy agreement a copy of the notice under subsection (1).

Penalty: 20 penalty units.

425 Notice of assignment or transfer by tenant

S. 425(1)
amended by
Nos 67/2010
s. 152, 47/2012
s. 27.

- (1) If a tenant assigns or transfers any of the tenant's rights and duties under a tenancy agreement to another person, the landlord and the tenant and the person to whom the rights and duties are assigned or transferred must notify the Authority in accordance with this section of that assignment or

transfer if an amount of bond has been paid in respect of the tenancy agreement.

Penalty: 20 penalty units.

- (2) A notice under subsection (1) must—
- (a) contain the prescribed information; and
 - (b) be signed by the tenant, the landlord and the person to whom the rights and duties are assigned or transferred; and
 - (c) be given to the Authority within 5 days after the assignment or transfer takes effect.

426 Agent to produce authorisation on request

An agent for a landlord must, at the request of the Authority, produce evidence of the agent's authorisation to act as agent under this Part.

427 Authority to record names

- (1) The Authority must register—
- (a) the name of each landlord and tenant who appears on the bond lodgment form for an amount of bond; and
 - (ab) in the case of a bond lodgment form or bond substitution form that states that the amount of bond has been paid by the Director of Housing or an agent of the Director of Housing on behalf of a tenant—
 - (i) the fact that the amount of bond has been so paid; and
 - (ii) the amount of bond that has been so paid; and
 - (iii) if applicable, the amount of bond that has been refunded to the tenant under section 411C; and

S. 427(1)(a)
amended by
No. 47/2012
s. 28(a).

S. 427(1)(aa)
inserted by
No. 93/2003
s. 15,
substituted as
s. 427(1)(ab)
by No.
47/2012
s. 28(b).

- (b) the name of each assignee or transferee of whom the Authority is given notice under section 424 or 425.
- (2) The Authority must not, except in the prescribed circumstances, pay out an amount of bond to any person unless the name of that person is registered under subsection (1).

S. 428
amended by
No. 67/2010
s. 153.

428 Tenant must not use bond as rent

A tenant must not refuse to pay rent on the ground that the tenant intends to regard as rent paid by the tenant the bond or any part of the bond paid in respect of the rented premises.

Penalty: 20 penalty units.

Division 5—Residential Tenancies Bond Authority

429 Establishment of Authority

- (1) There is established a Residential Tenancies Bond Authority.
- (2) The Authority—
 - (a) is a body corporate with perpetual succession;
 - (b) shall have an official seal;
 - (c) may acquire, hold and dispose of real and personal property;
 - (d) may sue and be sued in its corporate name;
 - (e) may do and suffer all acts and things that bodies corporate may by law do and suffer.
- (3) The official seal of the Authority must be kept in the custody that the Authority directs and must not be used except as authorised by the Authority.
- (4) All courts must take judicial notice of the official seal of the Authority on a document and must presume that it was properly sealed.

430 Constitution of Authority

The Authority is constituted by the Director.

431 Functions of Authority

The functions of the Authority are—

- (a) to collect and disburse bond money paid to the Authority under this Act;
- (b) to establish and administer—
 - (i) a Residential Bonds Account; and
 - (ii) a Residential Bonds Investment Income Account;
- (c) to invest money held in those Accounts in accordance with this Act;
- (ca) to collect the information contained in bond lodgment forms and bond substitution forms given to the Authority and other information kept by the Authority in relation to bonds (including substitute bonds under section 410B) held by the Authority;
- (cb) to disclose the information (other than persons' names) referred to in paragraph (ca), whether it was collected before, on or after the commencement of section 16 of the **Residential Tenancies (Amendment) Act 2003**, to the Director of Housing for the purpose of the use of that information by the Director of Housing in research, compiling statistics and public education;
- (d) to carry out any other function conferred on it by this Act.

S. 431(ca)
inserted by
No. 93/2003
s. 16,
amended by
No. 47/2012
s. 29.

S. 431(cb)
inserted by
No. 93/2003
s. 16.

432 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 carrying out of its functions.
- (2) Without limiting subsection (1), the Authority may enter into any arrangements or agreements with any person or body to act as its agent in the carrying out of any of its functions under this Part except its powers under sections 423(2) and 437.

433 Authority subject to Minister's general direction and control

The Authority is subject to the general direction and control of the Minister in carrying out its powers and functions.

S. 434
amended by
No. 46/1998
s. 7(Sch. 1).

434 Delegation

The Authority may, by instrument, delegate to any employee of the public service any of its powers or functions, except this power of delegation and its powers under sections 423(2) and 437.

Division 6—Bond Accounts

435 Residential Bonds Account

- (1) The Authority must establish an account to be called the Residential Bonds Account.
- (2) There must be paid into the Residential Bonds Account all amounts of bond received by the Authority under this Act.
- (3) The Authority must pay out of the Residential Bonds Account all amounts of bond—
 - (a) authorised by or under this Act to be paid out of the Residential Bonds Account; or
 - (b) directed by the Tribunal or a court to be paid out of the Residential Bonds Account.

436 Residential Bonds Investment Income Account

- (1) The Authority must establish an account to be called the Residential Bonds Investment Income Account.
- (2) There must be paid into the Residential Bonds Investment Income Account any amount of interest received on the investment of the Residential Bonds Account and the Residential Bonds Investment Income Account.
- (3) The Authority must pay out of the Residential Bonds Investment Income Account—
 - (a) any amount required for the administration of this Part; and
 - (b) any amount authorised by or under this Act to be paid out of the Residential Bonds Investment Income Account.

437 Residential Tenancies Fund

The Authority may pay into the Residential Tenancies Fund out of the Residential Bonds Investment Income Account any amount which the Authority determines should be paid into the Residential Tenancies Fund.

438 Borrowing and investment powers of Authority

- (1) The Authority must open and maintain separate accounts at an authorised deposit-taking institution or institutions within the meaning of the Banking Act 1959 of the Commonwealth in the State for the purposes of the Residential Bonds Account and the Residential Bonds Investment Income Account.
- (2) The Authority has the powers conferred on it by the **Borrowing and Investment Powers Act 1987**.

S. 438(1)
amended by
No. 11/2001
s. 3(Sch.
item 63.1).

439 Additional amounts

- (1) The Minister may from time to time make a declaration under this section providing for the payment of an amount or amounts in respect of bonds.
- (2) Before making a declaration under this section, the Minister must obtain a report of an actuary on the Residential Tenancies Fund.
- (3) The Minister must not make a declaration under this section except in accordance with the recommendations contained in a report under subsection (2).
- (4) A declaration made under this section—
 - (a) must be made by a notice published in the Government Gazette; and
 - (b) may provide for the payment of amounts in respect of bonds of a specified class or classes calculated at a specified rate and in respect of a specified period.
- (5) If a declaration has been made under this section, then the amount or amounts determined from time to time in accordance with that declaration in respect of a bond must be added to the bond when it is paid out under Division 3.
- (6) An amount or amounts to be added to a bond pursuant to subsection (5) must be retained in the Residential Bonds Investment Income Account until paid out under Division 3.

Part 10A—Residential tenancy databases

Pt 10A
(Heading and
ss 439A–
439M)
inserted by
No. 67/2010
s. 90.

439A Definitions

S. 439A
inserted by
No. 67/2010
s. 90.

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 a landlord an amount that
is more than the bond; and
- (b) the amount owed was paid to the
landlord more than 3 months after the
amount became due;

landlord includes—

- (a) rooming house owner;
- (b) caravan park owner;
- (c) caravan owner;
- (d) site owner;
- (e) agent of a landlord or a person referred
to in paragraphs (a) to (d);

list, personal information in a residential tenancy database—

- (a) means—
 - (i) enter the personal information into the database; or
 - (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 a landlord an amount that is more than the bond, the amount owed was paid to the landlord within 3 months after the amount became due; or
- (b) for a listing made on the basis the Tribunal has made a possession order, 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 opinion, whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

rented premises includes room, site, caravan and Part 4A dwelling;

residential tenancy database means a database—

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

tenancy agreement includes residency right and site agreement;

tenant includes—

- (a) resident; and
- (b) site tenant; and
- (c) former tenant, former resident or former site tenant.

439B Application

This Part does not apply to a residential tenancy database kept by an entity (including a Department of the government of a State or Territory) for use only by that entity or its officers, employees or agents.

S. 439B
inserted by
No. 67/2010
s. 90.

S. 439C
inserted by
No. 67/2010
s. 90.

439C Notice of usual use of database

- (1) This section applies if—
 - (a) a person (the *applicant*) applies to a landlord to enter into a tenancy agreement; and
 - (b) the landlord usually uses one or more residential tenancy databases for deciding whether a tenancy agreement should be entered into with a person.
 - (2) The landlord must, when the application is made, give the applicant written notice stating the following—
 - (a) the name of each residential tenancy database the landlord usually uses, or may use, for deciding whether a tenancy agreement should be entered into with a person;
 - (b) that the reason the landlord uses a residential tenancy database referred to in paragraph (a) is for checking an applicant's tenancy history;
 - (c) for each residential tenancy database referred to in paragraph (a), how persons may contact the database operator who operates the database and obtain information from the operator.
- Penalty: 20 penalty units.
- (3) Subsection (2) applies in relation to a residential tenancy database whether or not the landlord intends to use the database for deciding whether a tenancy agreement should be entered into with the applicant.

- (4) However, the landlord is not required to give the written notice referred to in subsection (2) if a written notice stating the matters referred to in that subsection was given to the applicant not more than 7 days before the application was made.

Example

The landlord gave a written notice stating the matters referred to in subsection (2) to the applicant when the applicant obtained the application form and that was less than 7 days before the applicant made the application.

439D Notice of listing if database used

S. 439D
inserted by
No. 67/2010
s. 90.

- (1) This section applies if—
- (a) a person (the *applicant*) applies to a landlord to enter into a tenancy agreement; and
 - (b) the landlord uses a residential tenancy database for checking whether personal information about the applicant is in the database; and
 - (c) personal information about the applicant is in the database.
- (2) The landlord must, as soon as possible 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: 20 penalty units.

S. 439E
inserted by
No. 67/2010
s. 90.

- (3) Subsection (2)(c) does not apply if the residential tenancy database does not identify the person who listed the personal information in the database.

439E Listing can be made only for particular breaches by particular persons

- (1) A landlord or database operator must not list personal information about a person in a residential tenancy database unless—
- (a) the person was named as a tenant in a tenancy agreement that has ended; and
 - (b) the person has breached the tenancy agreement or section 243, 244, 246, 248, 250, 253, 278, 279, 281, 282, 284, 302, 303, 305, 307, 309, 317X, 317Y, 317ZA, 317ZC or 317ZD; and
 - (c) because of the breach, either—
 - (i) the person owes the landlord an amount that is more than the bond; or
 - (ii) the Tribunal has made a possession order; and
 - (d) the personal information—
 - (i) relates only to the breach; and
 - (ii) is accurate, complete and unambiguous.
- (2) Without limiting subsection (1)(d)(ii), the personal information must indicate the nature of the breach.

Examples

- 1 An example of how personal information can indicate the nature of a breach is including the words "rent arrears" in personal information about a person who has breached a tenancy agreement by failing to pay rent.

- 2 An example of how personal information can indicate the nature of a breach is including the words "damage to premises" in the personal information about a person who has breached a tenancy agreement by damaging premises.

439F Further restriction on listing

**S. 439F
inserted by
No. 67/2010
s. 90.**

- (1) A landlord or database operator must not list personal information about a person in a residential tenancy database unless the landlord or operator has, without charging a fee—
- (a) given the person a copy of the personal information; or
 - (b) taken other reasonable steps to disclose the personal information to the person.

Penalty: 20 penalty units.

- (2) A landlord or database operator must not list personal information about a person in a residential tenancy database unless the landlord or operator has given the person at least 14 days to review the personal information and make submissions—
- (a) objecting to its entry into the database; or
 - (b) about its accuracy, completeness and clarity.

Penalty: 20 penalty units.

- (3) A landlord or database operator must not list personal information about a person in a residential tenancy database unless the landlord or operator has considered any submissions made under subsection (2).

Penalty: 20 penalty units.

- (4) Subsections (1) and (2) do not apply if the landlord or database operator cannot locate the person after making reasonable enquiries.
- (5) Subsections (2) and (3) do not apply—
 - (a) to information that, at the time of the listing, is contained in publicly available court or Tribunal records; or
 - (b) to a listing involving only an amendment of personal information about a person under section 439G.

S. 439G
inserted by
No. 67/2010
s. 90.

439G Ensuring quality of listing—landlord's obligation

- (1) This section applies if a landlord who lists personal information in a residential tenancy database becomes aware that the information is inaccurate, incomplete, ambiguous or out of date.
- (2) The landlord 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: 60 penalty units in the case of a natural person;
300 penalty units in the case of a body corporate.

Example

A landlord lists, in a residential tenancy database, personal information about a tenant who owes the landlord an amount that is more than the bond. The tenant pays the amount owed to the landlord more than 3 months after the amount became due. The landlord must, within 7 days after the landlord becomes aware of the payment, give the database operator who keeps the database written notice of—

- (a) the personal information being inaccurate; and
 - (b) the details of the payment to be included in the personal information so that it is no longer inaccurate.
- (3) The landlord must keep a copy of the written notice for one year after it was given under subsection (2).

Penalty: 10 penalty units.

439H Ensuring quality of listing—database operator's obligation

S. 439H
inserted by
No. 67/2010
s. 90.

- (1) This section applies if a landlord who has listed personal information in a residential tenancy database gives the database operator who operates the database a written notice stating that the personal information must be—
- (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: 60 penalty units in the case of a natural person;
300 penalty units in the case of a body corporate.

S. 439I
inserted by
No. 67/2010
s. 90.

439I Providing copy of personal information listed

- (1) A landlord 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: 20 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: 20 penalty units.

- (3) If a landlord 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.
- (4) A fee charged by a landlord for giving personal information under subsection (1), or by a database operator for giving personal information under subsection (2)—
- (a) must not be excessive; and
 - (b) must not apply to lodging a request for accessing the information.

S. 439J
inserted by
No. 67/2010
s. 90.

439J Notifying relevant non-parties of Tribunal order about listing

- (1) This section applies if—
- (a) under section 439M, the Tribunal 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 Tribunal must ensure a copy of the order is given to the relevant person.

439K Keeping personal information listed

S. 439K
inserted by
No. 67/2010
s. 90.

- (1) 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 3 year period referred to in paragraph (a) ends, the period ending when the information must be removed under the national privacy principles.

Penalty: 60 penalty units in the case of a natural person;
300 penalty units in the case of a body corporate.

- (2) 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 (1)(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 (1) or another law.

(3) This section does not limit the operation of this Part or a provision of another law that requires the removal of the personal information.

(4) In this section—

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

S. 439L
inserted by
No. 67/2010
s. 90.

439L Application to Tribunal for removal or amendment of listing

(1) A person may apply to the Tribunal for an order—

- (a) prohibiting a landlord or a database operator from listing personal information about that person that a landlord or database operator proposes to list on a residential tenancy database; or
- (b) requiring a landlord or a database operator to amend personal information about that person that is listed or to be listed in a residential tenancy database; or
- (c) requiring a landlord or a database operator to remove personal information about that person that is listed in a residential tenancy database—

if the landlord or database operator fails to comply with section 439D, 439E, 439F or 439G in relation to the listing of that personal information.

(2) A person may apply to the Tribunal for an order requiring a database operator to remove personal information about that person from a residential tenancy database if the database operator has failed to comply with section 439H or 439K in relation to the listing of that personal information.

- (3) An application may be made under this section irrespective of whether the personal information in respect of which the application is made was listed in a residential tenancy database before, on or after the commencement of this Part.

Note

This section does not provide for claims for compensation. If a court finds a person guilty of an offence or convicts a person of an offence under this Part, a person who has suffered injury as a direct result of the offence may apply to the court for compensation under Division 2 of Part 4 of the **Sentencing Act 1991**.

439M What can the Tribunal order?

**S. 439M
inserted by
No. 67/2010
s. 90.**

- (1) If an application is made under section 439L, the Tribunal may make an order—
- (a) prohibiting a landlord or database operator from listing personal information about the applicant in a residential tenancy database; or
 - (b) requiring a landlord or database operator to amend personal information about the applicant that is or is to be listed in a residential tenancy database; or
 - (c) requiring a landlord or database operator to remove personal information about the applicant that is listed in a residential tenancy database.
- (2) The Tribunal may make an order under subsection (1) if the Tribunal determines that—
- (a) the landlord has not provided written notice to the applicant in accordance with section 439D(2); or
 - (b) the landlord or database operator has listed personal information in the residential tenancy database in contravention of section 439E or 439F; or

S. 439M(2)(d)
amended by
No. 43/2012
s. 3(Sch.
item 42.2).

- (c) the landlord has not provided written notice in accordance with section 439G in respect of personal information in the residential tenancy database that the landlord is aware is inaccurate, incomplete, ambiguous or out of date; or
- (d) the database operator has not amended or removed personal information listed in a residential tenancy database in accordance with section 439H(2).

Part 11—Functions of Tribunal

Pt 11
(Heading)
substituted by
No. 52/1998
s. 238(c).

* * * * *

Pt 11 Div. 1
(Heading and
ss 440–445)
amended by
No. 46/1998
s. 7(Sch. 1),
repealed by
No. 52/1998
s. 238(d).

Division 2—Jurisdiction of Tribunal

446 Jurisdiction of Tribunal

The Tribunal has jurisdiction to hear and determine an application under this Act relating to—

- (a) any matter arising in relation to a tenancy agreement or a proposed tenancy agreement of premises situated in Victoria; and
- (b) any matter arising in relation to a residency right under this Act; and
- (ba) any matter arising in relation to a site agreement or a proposed site agreement in respect of a Part 4A site; and
- (bb) any matter arising in relation to the rescission of a Part 4A dwelling purchase agreement under section 206JA; and
- (bc) any matter arising in relation to an SDA residency agreement or a proposed SDA residency agreement in respect of an SDA enrolled dwelling; and
- (c) any matter referred to it under this Act.

S. 446(ba)
inserted by
No. 67/2010
s. 62.

S. 446(bb)
inserted by
No. 56/2012
s. 9.

S. 446(bc)
inserted by
No. 38/2018
s. 302 (as
amended by
No. 19/2019
s. 236(1)).

447 Limits of jurisdiction of Tribunal

(1) Subject to subsection (3), the Tribunal must not—

S. 447(1)(a)
repealed by
No. 45/2002
s. 83(1).

* * * *

S. 447(1)(b)
amended by
Nos 67/2010
s. 63(1),
56/2012
s. 10(1).

(b) hear and determine an application for a compensation order which involves a monetary claim exceeding \$10 000, or in the case of the site agreement provisions or a Part 4A dwelling purchase agreement, \$100 000;

S. 447(1)(c)
amended by
Nos 67/2010
s. 63(1),
56/2012
s. 10(1).

(c) make a determination requiring or authorising the payment of an amount that exceeds \$10 000, or in the case of the site agreement provisions or a Part 4A dwelling purchase agreement, \$100 000;

S. 447(1)(d)
amended by
Nos 67/2010
s. 63(1),
56/2012
s. 10(1).

(d) make a determination requiring or authorising the carrying out of works, the estimated cost of which exceeds \$10 000, or in the case of the site agreement provisions or a Part 4A dwelling purchase agreement, \$100 000.

S. 447(1A)
inserted by
No. 45/2002
s. 83(2).

(1A) Subject to subsection (3), the Tribunal must not hear and determine an application—

(a) by a landlord or tenant under a tenancy agreement which involves a monetary claim for an amount exceeding \$10 000; or

(b) by a rooming house owner or resident in relation to the rooming house provisions, a residency right or an agreement referred to in section 94(2) which involves a monetary claim for an amount exceeding \$10 000; or

- (c) by a caravan park owner, a caravan owner or a resident in relation to the caravan park provisions, a residency right or an agreement referred to in section 144(1), (2) or (3) which involves a monetary claim for an amount exceeding \$10 000; or S. 447(1A)(c) amended by No. 67/2010 s. 63(2)(a).
- (d) by a site owner or a site tenant in relation to the site agreement provisions, a Part 4A dwelling purchase agreement or a site agreement which involves a monetary claim for an amount exceeding \$100 000. S. 447(1A)(d) inserted by No. 67/2010 s. 63(2)(b), amended by No. 56/2012 s. 10(2).
- (2) The Tribunal must not make a compensation or compliance order requiring the payment of money as a consequence of death, physical injury or pain and suffering.
- (3) The Tribunal may hear and determine an application or make a determination in respect of a higher amount if the parties to the application or hearing by instrument authorise the Tribunal to do so.
- (4) An authority must be signed by the parties and given to the principal registrar. S. 447(4) amended by No. 52/1998 s. 238(e).
- (5) An authority, once given, is irrevocable.

448 Proceedings of Tribunal not justiciable

- (1) Subject to this section, if an application is made to or proceedings are before the Tribunal, the issue concerned is not justiciable at any time before a court or person acting judicially other than the Supreme Court or the Tribunal except—
- (a) in proceedings instituted before the application to the Tribunal was made or proceedings commenced; or

- (b) if the application and proceedings have been withdrawn; or
 - (c) in proceedings for an offence.
- (2) Subsection (1) applies whether the issue is shown in the application or emerges in the course of proceedings.
- (3) The Tribunal must not determine an issue in an application or proceedings if a civil proceeding in respect of the issue was instituted before a court or person acting judicially before the application to or proceedings before the Tribunal unless the civil proceeding has been discontinued.

Pt 11 Div. 3
(Heading)
substituted by
No. 52/1998
s. 238(f).

Division 3—Who may apply to Tribunal?

Ss 449–451
repealed by
No. 52/1998
s. 238(g).

* * * * *

452 General applications to the Tribunal

- (1) A landlord or a tenant under a tenancy agreement may apply to the Tribunal if—
- (a) a dispute has arisen under the tenancy agreement; or
 - (b) there has been a breach of the tenancy agreement or of the provisions of this Act relating to the tenancy agreement.
- (2) A rooming house owner or a rooming house resident may apply to the Tribunal if—
- (a) a dispute arises in respect of a residency right or an agreement relating to a residency right; or

- (b) there has been a breach of a duty under the rooming house provisions.
- (3) A caravan park resident or a caravan park owner or a caravan owner may apply to the Tribunal if—
 - (a) a dispute arises in respect of a residency right or an agreement relating to a residency right; or
 - (b) there has been a breach of a duty under the caravan park provisions.
- (3A) A site owner or site tenant may apply to the Tribunal if—
 - (a) a dispute arises in respect of a site agreement or an agreement relating to a site agreement; or
 - (ab) a dispute arises in respect of the rescission of a Part 4A dwelling purchase agreement under section 206JA; or
 - (b) there has been a breach of a duty under the site agreement provisions.
- (3B) An SDA provider or an SDA resident under an SDA residency agreement may apply to the Tribunal in relation to a dispute that has arisen under Part 12A.
- (4) A person may apply to the Tribunal in relation to any dispute in respect of any amount paid to a proposed landlord under section 50.
- (5) A person who is not a landlord or tenant under a tenancy agreement may with the leave of the Tribunal apply to the Tribunal in relation to the tenancy agreement.

S. 452(3A)
inserted by
No. 67/2010
s. 64.

S. 452(3A)(ab)
inserted by
No. 56/2012
s. 11.

S. 452(3B)
inserted by
No. 38/2018
s. 303(1).

S. 452(6A)
inserted by
No. 38/2018
s. 303(2).

(6) A person who is not a caravan park resident or caravan park owner or caravan owner or rooming house resident or rooming house owner may with the leave of the Tribunal apply to the Tribunal in relation to a residency right.

(6A) A person who is not an SDA provider or SDA resident under an SDA residency agreement, with the leave of the Tribunal, may apply to the Tribunal in relation to the SDA residency agreement.

(7) Leave must not be granted unless the Tribunal is satisfied that the person has an interest and personal involvement in the tenancy agreement or residency right or an agreement relating to the residency right that is sufficient to justify the granting of leave.

S. 452(7A)
inserted by
No. 38/2018
s. 303(3).

(7A) Leave must not be granted under subsection (6A) unless the Tribunal is satisfied that the person has an interest and personal involvement in the SDA residency agreement that is sufficient to justify the granting of leave.

(8) The provisions of this section are in addition to all other rights and powers under this Act.

Ss 453–471
repealed by
No. 52/1998
s. 238(g).

* * * * *

Pt 11 Div. 4
(Heading)
amended by
No. 52/1998
s. 238(h).

Division 4—Orders of Tribunal

472 General power of Tribunal to make determinations

S. 472(1)
amended by
Nos 52/1998
s. 238(i),
11/2002
s. 3(Sch. 1
item 56.2).

(1) The Tribunal, on an application to or in proceedings before it, may make any orders it thinks fit—

- (a) to restrain any action in breach of a tenancy agreement or the provisions of this Act relating to a tenancy agreement;
- (b) to require any action in the performance of a tenancy agreement or of duties under this Act relating to the tenancy agreement;
- (c) to restrain any action in breach of the rooming house provisions or caravan park provisions;
- (d) to require any action in the performance of duties under the rooming house provisions or caravan park provisions;
- (da) to restrain any action in breach of a site agreement or the provisions of this Act relating to a site agreement; S. 472(1)(da)
inserted by
No. 67/2010
s. 65(a).
- (db) to require any action in the performance of a site agreement or of duties under this Act relating to the site agreement; S. 472(1)(db)
inserted by
No. 67/2010
s. 65(a).
- (dc) to require the refund of money paid under a rescinded Part 4A dwelling purchase agreement; S. 472(1)(dc)
inserted by
No. 56/2012
s. 12.
- (dd) for the return of a Part 4A dwelling under a rescinded Part 4A dwelling purchase agreement; S. 472(1)(dd)
inserted by
No. 56/2012
s. 12.
- (e) for the return of goods unlawfully taken or removed from—
 - (i) rented premises by a party to the tenancy agreement; or
 - (ii) a room by a rooming house owner or resident; or
 - (iii) a caravan or site by a caravan owner, caravan park owner or resident; or S. 472(1)(e)(iii)
amended by
No. 67/2010
s. 65(b).

S. 472(1)(e)(iv)
inserted by
No. 67/2010
s. 65(c).

(iv) a Part 4A dwelling or a Part 4A site by
a site owner or site tenant;

(f) to require the payment of compensation to
any person;

S. 472(1)(fa)
inserted by
No. 38/2018
s. 304.

(fa) in respect of any dispute arising under
Part 12A;

S. 472(1)(g)
amended by
No. 52/1998
s. 238(i).

(g) that are ancillary or incidental to any other
orders that it makes.

(2) The powers of the Tribunal under this section are
in addition to all other powers of the Tribunal
under this Act.

473 Powers of Tribunal where 2 or more tenancy agreements affect same premises

S. 473(1)
amended by
No. 52/1998
s. 238(j)(i).

(1) If there are 2 or more tenancy agreements in
respect of the same premises and the rights of the
landlord and tenant under any of the agreements
are prejudicially affected by the application of this
Act to 2 or more of the agreements, the Tribunal
may make any orders it thinks fit—

(a) to give effect to the rights under this Act of
the tenant in possession under a tenancy
agreement; and

S. 473(1)(b)
amended by
No. 52/1998
s. 238(j)(ii).

(b) subject to that first order, to give effect to the
rights under this Act of each tenant and each
landlord of the premises.

(2) This section applies only to tenancy agreements to
which this Act applies.

(3) The powers of the Tribunal under this section are
in addition to all other powers of the Tribunal
under this Act.

* * * * *

Ss 474–478
repealed by
No. 52/1998
s. 238(k).

479 Review of certain determinations and orders

S. 479
substituted by
No. 52/1998
s. 239(1).

(1) This section applies to—

(a) a determination made by the Tribunal under section 415;

(ab) a determination made by the Tribunal under section 321C;

S. 479(1)(ab)
inserted by
No. 45/2002
s. 84.

(b) a determination made by the principal registrar under Division 2 of Part 7.

(2) A person to whom a determination referred to in subsection (1) applies may apply to the Tribunal for review of the determination on the ground that there has been a breach of, or a failure to comply with, this Act.

(3) The Director of Housing may apply to the Tribunal for review of a determination referred to in subsection (1) that relates to a bond paid on behalf of a tenant or resident by the Director of Housing or an agent of the Director of Housing.

(4) An application under this section must be made within 14 days after the person is given a copy of the determination.

(5) If, on an application under this section, the Tribunal is satisfied that there has been a breach of, or a failure to comply with, this Act, the Tribunal may rescind or vary the determination.

- (6) Nothing in Division 3 of Part 3 of the **Victorian Civil and Administrative Tribunal Act 1998** applies to a review under this section.

S. 480
repealed by
No. 52/1998
s. 238(k),
new s. 480
inserted by
No. 45/2002
s. 85.

480 Offence to fail to comply with determination of Tribunal

S. 480(1)
amended by
No. 67/2010
s. 154.

- (1) A person to whom a determination of the Tribunal under this Act applies must comply with that determination.

Penalty: 20 penalty units and 5 penalty units for each day the non-compliance continues after the time within which the person is required to comply with the determination, up to a maximum of 60 penalty units.

- (2) This section applies—
- (a) despite anything to the contrary in section 133 of the **Victorian Civil and Administrative Tribunal Act 1998**; and
 - (b) whether the determination of the Tribunal relates to a monetary order or a non-monetary order within the meaning of the **Victorian Civil and Administrative Tribunal Act 1998**.

Pt 11 Div. 5
(Heading and
ss 481–484)
amended by
No. 46/1998
s. 7(Sch. 1),
repealed by
No. 52/1998
s. 238(k).

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Division 6—Rent Special Account

485 Rent Special Account

- | | |
|---|--|
| (1) The principal registrar must establish a trust account to be called the "Rent Special Account". | S. 485(1)
amended by
No. 52/1998
s. 238(l)(i). |
| (2) There must be paid into the Rent Special Account all money paid under an order of the Tribunal authorising the payment of rent or hiring charges into that Account. | S. 485(2)
amended by
No. 52/1998
s. 238(l)(ii). |
| (3) Money in the Rent Special Account may be paid out only in accordance with section 77, 134 or 193. | |
| (4) There must be paid into the Residential Tenancies Fund any amount of interest received on the investment of the Rent Special Account. | |
| (5) The principal registrar must open and maintain accounts at an authorised deposit-taking institution or institutions within the meaning of the Banking Act 1959 of the Commonwealth in the State for the purposes of the Rent Special Account. | S. 485(5)
amended by
Nos 52/1998
s. 238(l)(iii),
11/2001
s. 3(Sch.
item 63.2). |

Part 12—Administration

Division 1—Director of Consumer Affairs Victoria

Pt 12 Div. 1
(Heading)
substituted by
Nos 17/1999
s. 41(2),
35/2000
s. 50(a),
amended by
No. 30/2003
s. 91.

486 Functions of Director

The functions of the Director under this Act are—

(a) to investigate—

S. 486(a)(i)
amended by
No. 45/2002
s. 96(b).

(i) any matter referred to him or her by the Tribunal or the principal registrar;

S. 486(a)(ii)
amended by
No. 67/2010
s. 66(a).

(ii) any application made to the Director under Part 2, 3, 4 or 4A in relation to excessive rent or hiring charges;

(iii) any complaint made by a tenant under a tenancy agreement that the landlord is in breach of a duty to maintain the rented premises in good repair;

(b) to investigate, if the Director considers it appropriate to do so—

S. 486(b)(ii)
amended by
No. 67/2010
s. 83(a).

(i) any other dispute in relation to a tenancy agreement between a landlord and a tenant that is referred by the landlord or the tenant;

(ii) any matter arising under the rooming house provisions;

- (iii) on the written application of a resident, caravan park owner or caravan owner any matter arising under the caravan park provisions;
- (iv) on the written application of a site tenant or site owner, any matter arising under the site agreement provisions; S. 486(b)(iv) inserted by No. 67/2010 s. 66(b).
- (c) to report on an investigation under paragraph (a) or (b) to the person who referred the matter or dispute or made the application or complaint;
- (ca) to report on an investigation under paragraph (b)(ii) to any person to whom the matter under investigation relates; S. 486(ca) inserted by No. 67/2010 s. 83(b).
- (d) to conciliate settlements of complaints or disputes referred to him or her under paragraph (a)(iii) or (b);
- (e) to undertake programs for the dissemination (in English or in any other language) of information to educate or inform the public in relation to the provisions of this Act and the services provided under this Act by the Director;
- (f) to publish standard form tenancy agreements;
- (g) to conduct research into matters relating to tenancy agreements, rooming houses and caravan parks and to disseminate that research;
- (h) to liaise, co-operate and exchange information with, and to provide financial assistance from the Residential Tenancies Fund to government departments, public statutory authorities and other persons engaged in—

- (i) the provision of information in relation to the provisions of this Act;
- (ii) educating or informing the public in relation to this Act and the services provided under this Act;
- (iii) conducting research into matters relating to tenancy agreements, rooming houses or caravan parks or publishing the results of that research;
- (i) any other functions conferred on the Director by or under this Act.

S. 486B
inserted by
No. 38/2018
s. 305.

486B Further functions of Director in relation to SDA enrolled dwellings

- (1) The functions of the Director under Part 12A are—
 - (a) to investigate, if the Director considers it appropriate to do so, on the written application of an SDA provider, SDA resident or a person on behalf of an SDA resident, any matter arising under Part 12A; and
 - (b) to report on an investigation under paragraph (a) to the person who made the application and any person on whose behalf the application was made; and
 - (c) to conciliate settlements of complaints or disputes referred to the Director under paragraph (a); and
 - (d) to publish standard form SDA residency agreements; and
 - (e) to conduct research into matters relating to SDA residency agreements and to disseminate that research; and

S. 486B(1)(e)
amended by
No. 19/2019
s. 149(a).

- (f) to maintain a list recording the details of SDA residency agreements the Director is notified of under section 498F(5).
- (2) The Director may liaise, co-operate and exchange information with, and provide financial assistance from the Residential Tenancies Fund to government departments, public statutory authorities and other persons engaged in—
 - (a) the provision of information in relation to Part 12A; and
 - (b) educating or informing the public in relation to Part 12A and the services provided under that Part; and
 - (c) conducting research into matters relating to SDA residency agreements or publishing the results of that research.

S. 486B(1)(f)
inserted by
No. 19/2019
s. 149(b).

486C Referral of matter to another person or body

- (1) This section applies if the Director considers that a matter in respect of an SDA enrolled dwelling, SDA provider, SDA resident or Part 12A could be dealt with more effectively or appropriately by another prescribed person or body which has jurisdiction to deal with the matter.
- (2) If the Director considers it appropriate to do so, the Director, after consulting with the prescribed person or body, may—
 - (a) decline to deal with the matter; and
 - (b) refer it to the prescribed person or body.

S. 486C
inserted by
No. 38/2018
s. 305.

487 Powers of Director

The Director has the power to do anything that is necessary or convenient to be done for or in connection with the performance of the Director's functions under this Act.

488 Director subject to Minister's general direction and control

The Director is subject to the general direction and control of the Minister in carrying out his or her powers and functions under this Act.

489 Delegation by Director

The Director may, by instrument, delegate to any officer or employee in the public service or of a public statutory authority any of the Director's powers or functions under this Act, except this power of delegation.

490 Reports of Director

(1) The Director is not required to make a report on an investigation into a matter or a dispute referred to in section 486(b) if the Director is of the opinion that the matter or dispute is frivolous or vexatious and does not justify the making of a report.

S. 490(1A)
inserted by
No. 38/2018
s. 306.

(1A) The Director is not required to make a report on an investigation into a matter or a dispute referred to in section 486B(1)(b) if the Director is of the opinion that the matter or dispute is frivolous or vexatious and does not justify the making of a report.

(2) A report of the Director under this Act need not be in writing, except where expressly required by this Act.

Division 2—Residential Tenancies Fund

491 Establishment of Residential Tenancies Fund

There shall be kept in the Trust Fund under the **Financial Management Act 1994** an account to be called the "Residential Tenancies Fund".

492 Payments into the Residential Tenancies Fund

There must be paid into the Residential Tenancies Fund—

- (a) all money required or authorised by or under this Act or any other Act to be paid into the Residential Tenancies Fund; and
- (b) all penalties paid or recovered under this Act; and
- (c) all fees paid under this Act; and
- (d) any gift, donation or bequest of money to the Residential Tenancies Fund.

493 Payments out of Residential Tenancies Fund

There must be paid out of the Residential Tenancies Fund at the direction of the Director—

- (a) any money authorised by or under this Act to be paid out of the Residential Tenancies Fund; and
- (b) the costs of administration of this Act, other than Part 10.

494 Treasurer's powers and duties in relation to Residential Tenancies Fund

The Treasurer—

- (a) may from time to time invest money in the Residential Tenancies Fund in any manner the Treasurer thinks fit; and
- (b) must pay into the Residential Tenancies Fund any interest received on the money so invested.

495 Director may authorise payments for research etc.

The Director may authorise payment from the Residential Tenancies Fund of financial assistance to government departments, public statutory authorities and other persons engaged in—

- (a) the provision of information in relation to the provisions of this Act;
- (b) educating or informing the public in relation to this Act and the services provided under this Act;
- (c) conducting research into matters relating to tenancy agreements, rooming houses or caravan parks or publishing the results of that research.

496 Loans to tenants and residents from Residential Tenancies Fund

- (1) A tenant under a proposed tenancy agreement may apply to the Director for financial assistance for the payment of all or part of the bond or the first payment of rent under the tenancy agreement.
- (2) A person who proposes to be a resident of a rooming house may apply to the Director for financial assistance for the payment of all or part of the bond or the first payment of rent in respect of the residency.
- (3) A person who proposes to be a resident of a caravan park may apply to the Director for financial assistance for the payment of all or part of the bond or the first payment of rent in respect of the residency.
- (4) An application must be in writing.

- (5) The Director may authorise the making of a loan out of the Residential Tenancies Fund to the applicant of an amount not exceeding the sum of the bond and the first payment of rent if the Director is satisfied that the applicant would not without financial assistance be able to pay all or part of that bond or first payment of rent.
- (6) A loan under this section is subject to any conditions the Director thinks fit including—
 - (a) a condition for repayment of the loan to the Residential Tenancies Fund with or without interest; and
 - (b) a condition that the amount of the loan be paid by the Director on the applicant's behalf to the landlord, rooming house owner or caravan park owner.

497 Loans to landlords etc. from Residential Tenancies Fund

- (1) A landlord under a tenancy agreement may apply to the Director for financial assistance for the payment of the cost of urgent repairs to the rented premises.
- (2) A rooming house owner may apply to the Director for financial assistance for the payment of the cost of urgent repairs to a room in the rooming house.
- (3) A caravan park owner may apply to the Director for financial assistance for the payment of the cost of urgent repairs to a caravan.
- (4) An application must be in writing.
- (5) If the Director is satisfied that the applicant would not without financial assistance be able to pay the cost of the urgent repairs, the Director may authorise the making of a loan out of the Residential Tenancies Fund to the applicant of an amount not exceeding—

- (a) the amount of rent payable in the preceding period of 2 months under the tenancy agreement; or
 - (b) the amount of rent payable in the preceding period of 2 months for the room; or
 - (c) the amount of hiring charges payable in the preceding period of 2 months for the caravan.
- (6) A loan under this section is subject to any conditions the Director thinks fit including a condition for repayment of the loan to the Residential Tenancies Fund with or without interest.

498 Recovery of loan money

If any money owing under a loan under this Part is not paid when it becomes due and payable in accordance with the terms and conditions of the loan—

- (a) the Director may recover that money in any court of competent jurisdiction as a debt due to the Crown; and
- (b) any money so recovered by the Director must be paid into the Residential Tenancies Fund.

S. 498A
inserted by
No. 52/1998
s. 239(2).

498A Director may authorise payment for certain legal costs

If—

- (a) the Tribunal refers a question of law in a proceeding under this Act to the Trial Division of the Supreme Court or the Court of Appeal under section 96 of the **Victorian Civil and Administrative Tribunal Act 1998**; and

(b) the Director considers that the question is of general public importance—

the Director may authorise payment of some or all of the costs of the referral out of the Residential Tenancies Fund.

Pt 12A
(Headings
and ss 498B–
498ZZZT)
inserted by
No. 38/2018
s. 293.

S. 498B
inserted by
No. 38/2018
s. 293.

S. 498B def. of
carer
inserted by
No. 19/2019
s. 150(1).

Part 12A—Specialist disability accommodation

Division 1—Preliminary

498B Definitions

In this Part—

carer has the same meaning as in the **Carers
Recognition Act 2012**;

community visitor has the same meaning as in the
Disability Act 2006;

CoS supported accommodation client means an
older person—

- (a) who is receiving continuity of supports
under the Commonwealth Continuity of
Support Programme in respect
of specialist disability services for older
people; and

- (b) who is not an NDIS participant;

NDIA means the National Disability Insurance
Scheme Launch Transition Agency
established under the National Disability
Insurance Scheme Act 2013 of the
Commonwealth;

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

NDIS behaviour support plan has the same meaning as in the **Disability Act 2006**;

S. 498B def. of *NDIS behaviour support plan* inserted by No. 19/2019 s. 150(1).

NDIS participant means a person who is a participant in the NDIS;

NDIS Quality and Safeguards Commission means the NDIS Quality and Safeguards Commission established under section 181A of the National Disability Insurance Scheme Act 2013 of the Commonwealth;

registered NDIS provider has the same meaning as in the National Disability Insurance Scheme Act 2013 of the Commonwealth;

S. 498B def. of *registered NDIS provider* inserted by No. 19/2019 s. 150(1).

rent means an amount paid to an SDA provider by an SDA resident to occupy an SDA enrolled dwelling and use facilities and services;

SDA enrolled dwelling has the same meaning as it has in section 3(1);

SDA provider means a person—

S. 498B def. of *SDA provider* amended by No. 19/2019 s. 150(2).

(a) who is a registered NDIS provider that provides specialist disability accommodation; and

(b) who is the owner or leaseholder of an SDA enrolled dwelling;

SDA recipient means an NDIS participant who is funded to reside in an SDA enrolled dwelling;

SDA residency agreement means an agreement entered into or established under section 498F between an SDA provider and an SDA resident in respect of an SDA enrolled dwelling;

SDA resident means—

- (a) a person who is an SDA recipient; or
- (b) a person who is a CoS supported accommodation client;

SDA resident's administrator means the SDA resident's attorney appointed under an enduring power of attorney under the **Powers of Attorney Act 2014** to administer the SDA resident's property or a person appointed by a court or tribunal as the administrator of the SDA resident's property;

SDA resident's guardian means a resident's guardian within the meaning of the **Disability Act 2006**;

Senior Practitioner has the same meaning as in the **Disability Act 2006**;

standard form means the form prescribed for the purposes of section 498I;

Supported Independent Living provider means a registered NDIS provider that provides supported independent living assistance;

support plan means an SDA resident's plan that is in effect under section 37 of the National Disability Insurance Scheme Act 2013 of the Commonwealth.

S. 498B def. of *standard form* inserted by No. 19/2019 s. 150(1).

S. 498B def. of *Supported Independent Living provider* substituted by No. 19/2019 s. 150(3).

498C When does Part not apply to occupation of SDA enrolled dwelling

S. 498C
inserted by
No. 38/2018
s. 293.

- (1) Subject to Division 2, nothing in this Part affects the right of any of the following persons to enter into a tenancy agreement in respect of an SDA enrolled dwelling with an SDA provider by mutual agreement—
 - (a) an SDA resident;
 - (b) any person who is not an SDA resident.
- (2) If an SDA provider and SDA resident have entered into a tenancy agreement in respect of an SDA enrolled dwelling, this Part (other than Division 2 to the extent specified in that Division) does not apply to the SDA provider and the SDA resident while the tenancy agreement continues.

S. 498C(2)
amended by
No. 19/2019
s. 151.

Division 2—Provision of information and notices

Pt 12A Div. 2
(Heading)
amended by
No. 19/2019
s. 152.

498D Information statement required to be given to SDA resident

S. 498D
inserted by
No. 38/2018
s. 293.

- (1) An SDA provider must give an SDA resident an information statement, in the form approved by the Director, at least 7 days before—
 - (a) entering into a tenancy agreement with the SDA resident; or
 - (b) entering into an SDA residency agreement with the SDA resident; or

S. 498D(1)
amended by
No. 19/2019
s. 153(1)(2).

- (c) establishing an SDA residency agreement with the SDA resident.

Penalty: 300 penalty units in the case of a natural person;
750 penalty units in the case of a body corporate.

Note

Section 498F(3) sets out when an SDA residency agreement is established.

- (2) Subsection 3 applies to an SDA provider if—
- (a) the SDA provider has entered into a tenancy agreement with a tenant; and
- (b) the tenant has sought the written consent of the SDA provider to sub-let the SDA enrolled dwelling to an SDA resident in accordance with section 81.
- (3) Before consenting to the sublease of an SDA enrolled dwelling, the SDA provider must give any SDA resident that may become a sublessee an information statement in the form approved by the Director.

S. 498D(3)
amended by
No. 19/2019
s. 153(3)(4).

Penalty: 300 penalty units in the case of a natural person;
750 penalty units in the case of a body corporate.

S. 498DA
inserted by
No. 19/2019
s. 154.

498DA Notice of revocation of registration or enrolment

- (1) If the registration of a person under the NDIS as a registered provider is revoked, the person must give any SDA resident to whom the person is providing an SDA enrolled dwelling, written notice—
- (a) within 5 days of the registration being revoked; and

(b) specifying—

- (i) that the person's registration under the NDIS has been revoked; and
- (ii) the date of the revocation; and
- (iii) in the case of an SDA enrolled dwelling provided under a tenancy agreement, that the SDA resident may give the landlord a reduced period of notice of intention to vacate the SDA enrolled dwelling under section 237; and
- (iv) in the case of an SDA enrolled dwelling provided under an SDA residency agreement, that the SDA residency agreement is terminated 90 days after the day the person's registration under the NDIS was revoked.

Penalty: 25 penalty units.

(2) If a dwelling ceases to be an SDA enrolled dwelling, an SDA provider providing the dwelling to an SDA resident, must give the SDA resident written notice—

- (a) within 5 days after the dwelling ceases to be enrolled as an SDA enrolled dwelling; and
- (b) specifying—
 - (i) that the dwelling is no longer enrolled as an SDA enrolled dwelling; and
 - (ii) the date the dwelling ceased to be an SDA enrolled dwelling; and
 - (iii) in the case of a former SDA enrolled dwelling being provided under a tenancy agreement, that the SDA resident may give the landlord a reduced period of notice of intention to

vacate the SDA enrolled dwelling
under section 237; and

- (iv) in the case of a former SDA enrolled dwelling provided under an SDA residency agreement, that the SDA residency agreement is terminated 90 days after the day the SDA enrolled dwelling ceased to be enrolled.

Penalty: 25 penalty units.

S. 498E
inserted by
No. 38/2018
s. 293.

498E Explaining notices or information given to SDA residents under this Part

- (1) The contents of any notice given or information provided to an SDA resident under this Part must be explained by the person giving the notice or providing the information to the SDA resident in the language, mode of communication and terms which the SDA resident is most likely to understand.
- (2) An explanation given under subsection (1) must, if reasonable, be given both orally and in writing.
- (3) If it appears that an SDA resident would benefit from support or requires support to understand a notice given or information provided under this Part, an SDA provider must use reasonable endeavours to convey the information or contents of the notice to the SDA resident in the language, mode of communication or terms which the SDA resident is most likely to understand.
- (4) If it appears that an SDA resident would benefit from support or requires support to understand a notice given or information provided under this Part, an SDA provider must give a copy of the notice or information—
 - (a) to a family member, carer, guardian, advocate or other person chosen by the SDA resident; or

S. 498E(4)
amended by
No. 19/2019
s. 155.

- (b) if no person is chosen under paragraph (a), to a person who the SDA provider considers can assist the SDA resident and is not employed by, or a representative of, the SDA provider.

498EA Explanation of Tribunal orders

S. 498EA
inserted by
No. 19/2019
s. 156.

- (1) This section applies if—
 - (a) the Tribunal makes an order or gives a direction in accordance with this Act that is in respect of an SDA resident; and
 - (b) the SDA resident is not represented by any of the following persons—
 - (i) the SDA resident's guardian (if any);
 - (ii) the SDA resident's administrator (if any);
 - (iii) a carer of the SDA resident;
 - (iv) a person chosen by the SDA resident;
 - (v) a litigation guardian appointed by the Tribunal;
 - (vi) an Australian lawyer; and
 - (c) one of the persons specified in subparagraph (i) or (ii) is a party to the proceeding for which the order was made, or the direction given, in respect of the SDA resident—
 - (i) an SDA provider; or
 - (ii) if an SDA provider is not a party to the proceeding but a relevant person is a party, a relevant person.
- (2) The SDA provider or a relevant person must explain the order or direction in the language, mode of communication and terms in which the SDA resident is most likely to understand.

- (3) An explanation given under subsection (2) must, if reasonable, be given both orally and in writing.
- (4) If it appears that the SDA resident would benefit from support or requires support to understand the order made, or direction given, the SDA provider or relevant person must use reasonable endeavours to convey the information or contents of the order or direction to the SDA resident in the language, mode of communication or terms which the SDA resident is most likely to understand.
- (5) If it appears that the SDA resident would benefit from support or requires support to understand the order made, or direction given, the SDA provider or relevant person must give a copy of the order or direction—
 - (a) to a family member, carer, guardian, advocate or other person chosen by the SDA resident; or
 - (b) if no person is chosen under paragraph (a), to a person who the SDA provider or other relevant person considers can assist the SDA resident and is not employed by, or a representative of, the SDA provider or other relevant person.
- (6) In this section—

relevant person means any of the following—

 - (a) an agent of the SDA provider;
 - (b) a mortgagee in respect of an SDA enrolled dwelling that the SDA resident is or was residing in;
 - (c) an SDA enrolled dwelling owner within the meaning of section 498ZZX.

Division 3—SDA residency agreements

498F Agreement for provision of SDA enrolled dwelling

**S. 498F
inserted by
No. 38/2018
s. 293.**

- (1) Subject to subsection (4), for the purposes of providing an SDA enrolled dwelling to an SDA resident in accordance with this Part, an SDA provider must—
 - (a) enter into an SDA residency agreement with the SDA resident before the SDA resident occupies the SDA enrolled dwelling; or
 - (b) work with the SDA resident in accordance with section 498G to establish an SDA residency agreement before the SDA resident occupies the SDA enrolled dwelling.
- (2) An SDA resident must sign an SDA residency agreement entered into under subsection (1)(a).
- (3) An SDA residency agreement referred to in subsection (1)(b) is taken to be established when—
 - (a) the SDA provider has complied with section 498G; and
 - (b) the SDA residency agreement is given to the SDA resident in accordance with section 498H.
- (4) An SDA provider is not required to comply with subsection (1) if the SDA provider is also an SDA resident and the sole occupant of the SDA enrolled dwelling.
- (5) An SDA provider must give the Director written notice of any SDA residency agreement entered into under subsection (1)(a) or that is taken to be established under subsection (3) within 14 days of the agreement being entered into or established.

**S. 498F(5)
inserted by
No. 19/2019
s. 157.**

Penalty: 60 penalty units.

S. 498F(6)
inserted by
No. 19/2019
s. 157.

- (6) A written notice specified in subsection (5) must state the following details—
- (a) the name and contact details of the SDA provider who has entered into or established the SDA residency agreement;
 - (b) the address of the SDA enrolled dwelling being provided by the SDA provider under the SDA residency agreement;
 - (c) the term of the SDA residency agreement.

S. 498G
inserted by
No. 38/2018
s. 293.

498G Working with SDA resident to establish an SDA residency agreement

- (1) For the purposes of section 498F(1)(b), an SDA provider works with an SDA resident to establish an SDA residency agreement if the SDA provider—
- (a) ensures the contents of the SDA residency agreement is explained to the SDA resident in the language, mode of communication and terms which the SDA resident is most likely to understand; and
 - (b) gives an explanation of the SDA residency agreement under paragraph (a) both orally and in writing where reasonable.
- (2) If it appears that an SDA resident would benefit from support or requires support to read and understand an explanation of an SDA residency agreement, the SDA provider must give a copy of the SDA residency agreement and any explanation of the SDA residency agreement to the SDA resident's guardian or the SDA resident's administrator (if any).
- (3) If it appears that an SDA resident would benefit from support or requires support to read and understand an explanation of an SDA residency agreement, the SDA provider must give a copy of

S. 498G(3)
amended by
No. 19/2019
s. 158.

the SDA residency agreement and any explanation of the SDA residency agreement—

- (a) to a family member, carer, advocate or other person chosen by the SDA resident; or
- (b) if no person is chosen under paragraph (a), a person who the SDA provider considers can assist the SDA resident and is not employed by, or a representative of, the SDA provider.

498H Copy of SDA residency agreement to be made available to SDA resident

S. 498H
inserted by
No. 38/2018
s. 293,
amended by
No. 19/2019
s. 159.

An SDA provider providing an SDA enrolled dwelling to an SDA resident under an SDA residency agreement (whether entered into or established), on or before the day specified in the SDA residency agreement as the day of commencement of the agreement—

- (a) must give the SDA resident a written copy of the SDA residency agreement; and
- (b) must provide a copy of the SDA residency agreement to the SDA resident's guardian or the SDA resident's administrator (if any).

Penalty: 25 penalty units.

498I SDA residency agreements to be in standard form

S. 498I
inserted by
No. 38/2018
s. 293.

- (1) An SDA residency agreement must be in the prescribed standard form and may include or refer to the following—
 - (a) matters required by the National Disability Insurance Scheme Act 2013 of the Commonwealth;
 - (b) matters required by any regulations, rules or instruments made under that Act.

S. 498I(2)
amended by
No. 19/2019
s. 160.

- (2) An SDA provider must not prepare or authorise the preparation of an SDA residency agreement in a form that is not in the prescribed standard form.

Penalty: 25 penalty units.

- (3) A failure to comply with this section does not make the SDA residency agreement illegal, invalid or unenforceable.

S. 498J
inserted by
No. 38/2018
s. 293.

498J Content of SDA residency agreement

- (1) The prescribed standard form of SDA residency agreement must specify—
- (a) the commencement date, end date, how the agreement may be extended and how the parties may terminate the agreement; and
 - (b) the rent, including how it is to be paid; and
 - (c) the amount of any utilities charges, to whom those charges are to be paid and when they are due; and
 - (d) the minimum period of notice required to be given by the SDA provider before the SDA provider can increase the rent; and
 - (e) the name and contact details of the parties to the agreement and their agents (if any); and
 - (f) the process for requesting repairs or maintenance to the SDA enrolled dwelling; and
 - (g) the rights and duties of the SDA resident and SDA provider as specified in this Part; and
 - (h) the circumstances in which an SDA provider or the SDA provider's agent is entitled to access the SDA enrolled dwelling and the notice that must be given before entry; and

- (i) that an SDA resident has the right to see a community visitor; and
 - (j) the process for making complaints; and
 - (k) any prescribed details or matters.
- (2) The prescribed standard form of an SDA residency agreement must not be inconsistent with the National Disability Insurance Scheme Act 2013 of the Commonwealth, and any regulations, rules or instruments made under that Act.

498K Invalid terms

S. 498K
inserted by
No. 38/2018
s. 293.

A term of an SDA residency agreement is invalid if it purports to exclude, restrict or modify or purports to have the effect of excluding, restricting or modifying—

- (a) the application to that SDA residency agreement of all or any of the provisions of this Part or any regulations made under this Act, the National Disability Insurance Scheme Act 2013 of the Commonwealth, or any regulations, rules or instruments made under that Act; or
- (b) the exercise of a right conferred by this Part or any regulations made under this Act, the National Disability Insurance Scheme Act 2013 of the Commonwealth, or any regulations, rules or instruments made under that Act.

498L Harsh and unconscionable terms

S. 498L
inserted by
No. 38/2018
s. 293.

- (1) An SDA resident may apply to the Tribunal for an order declaring invalid or varying a term of the SDA residency agreement.
- (2) Subject to subsection (3), on an application under subsection (1), the Tribunal may by order declare invalid or vary a term of the SDA residency agreement if it is satisfied that the term is harsh or

unconscionable or is such that a court exercising its equitable jurisdiction would grant relief.

S. 498L(3)
substituted by
No. 19/2019
s. 161.

- (3) A term of an SDA residency agreement must not be declared invalid under this section if—
- (a) it is required by or under the National Disability Insurance Scheme Act 2013 of the Commonwealth or any regulations, rules or instruments made under that Act; or
 - (b) it is required by any prescribed Act, regulations, rules or instruments; or
 - (c) it is in the prescribed standard form.
- (4) An order under this section has effect according to its terms.

Pt 12A Div. 3A
(Heading and
ss 498LA–
498LC)
inserted by
No. 19/2019
s. 162.

Division 3A—Disclosures and representations prior to entering into SDA residency agreement

S. 498LA
inserted by
No. 19/2019
s. 162.

498LA Restriction on use of personal information provided by applicants for SDA enrolled dwellings

An SDA provider or that person's agent must not use personal information disclosed by a person on an application form used to apply to enter into an SDA residency agreement unless the use is for the following—

- (a) to determine whether the applicant is, or will be, an SDA resident;
- (b) to determine whether the SDA enrolled dwelling meets the needs of the applicant;
- (c) if the SDA enrolled dwelling is a shared living environment, to assess the applicant's compatibility with—

- (i) SDA residents already residing in the SDA enrolled dwelling; or
- (ii) other applicants applying to enter into an SDA residency agreement in respect of the SDA enrolled dwelling.

498LB Information that SDA provider must disclose before entering SDA residency agreement

S. 498LB
inserted by
No. 19/2019
s. 162.

Before entering into an SDA residency agreement, an SDA provider must disclose the following information to the SDA recipient—

- (a) if the SDA provider has engaged an agent to sell the SDA enrolled dwelling or prepared a contract of sale, that there is a proposal to sell the SDA enrolled dwelling;
- (b) if a mortgagee has commenced a proceeding to enforce a mortgage over the SDA enrolled dwelling, that a mortgagee is taking action for possession of the SDA enrolled dwelling;
- (c) if the SDA provider is not the owner of the SDA enrolled dwelling, that the SDA provider has a right to let the SDA enrolled dwelling;
- (d) if the SDA enrolled dwelling is supplied with electricity from an embedded electricity network, the prescribed details of the operator of the embedded electricity network;
- (e) if the SDA provider is not the owner of the SDA enrolled dwelling and the owner has engaged an agent to sell the SDA enrolled dwelling or prepared a contract of sale, that there is a proposal to sell the SDA enrolled dwelling;

- (f) any other prescribed information in relation to the SDA enrolled dwelling.

S. 498LC
inserted by
No. 19/2019
s. 162.

498LC Misleading or deceptive conduct inducing a person to enter an SDA residency agreement

- (1) This section applies to—
- (a) an SDA provider who is not acting in trade or commerce in entering into an SDA residency agreement; and
 - (b) the agent of an SDA provider referred to in paragraph (a) who is not acting in trade or commerce.
- (2) An SDA provider or that person's agent must not induce a person to enter into an SDA residency agreement by engaging in conduct that is misleading or deceptive, or that is likely to mislead or deceive.
- (3) An SDA provider or that person's agent must not induce a person to enter into an SDA residency agreement by making a false or misleading representation concerning any of the following—
- (a) the SDA provider's interest in the land;
 - (b) the rent payable under the agreement;
 - (c) the location of the SDA enrolled dwelling to be let under the agreement;
 - (d) the characteristics of the SDA enrolled dwelling to be let under the agreement;
 - (e) the use to which the SDA enrolled dwelling to be let under the agreement is capable of being put or may lawfully be put;

- (f) the existence or availability of facilities associated with the SDA enrolled dwelling to be let under the agreement.

Penalty: 60 penalty units in the case of a natural person;

300 penalty units in the case of a body corporate.

- (4) This section does not limit the operation of the Australian Consumer Law (Victoria).

Division 4—General rights, responsibilities and duties of SDA providers and SDA residents

498M Duties of SDA provider

- (1) An SDA provider who provides an SDA enrolled dwelling must—

- (a) take reasonable measures to ensure that SDA residents are treated with dignity and respect and with due regard to their entitlement to privacy; and

- (b) ensure that the SDA enrolled dwelling in which the specialist disability accommodation is provided and any fixtures and fittings are maintained in good repair; and

- (c) not unreasonably interfere with an SDA resident's right to privacy; and

- (ca) install fixtures required by the SDA resident to assist their daily living or proper use and enjoyment of the SDA enrolled dwelling; and

- (d) take reasonable measures to ensure the security of an SDA enrolled dwelling; and

S. 498M
inserted by
No. 38/2018
s. 293,
amended by
No. 19/2019
s. 163(2) (ILA
s. 39B(1)).

S. 498M(1)(c)
substituted by
No. 19/2019
s. 163(1)(a).

S. 498M(1)(ca)
inserted by
No. 19/2019
s. 163(1)(a).

S. 498M(1)(f)
substituted by
No. 19/2019
s. 163(1)(b).

(e) minimise any inconvenience or disruption to the SDA resident when undertaking repairs or renovations; and

(f) take reasonable steps to ensure that any repairs or renovations—

(i) are carried out by a suitably qualified person; and

(ii) are completed in a timely manner.

S. 498M(2)
inserted by
No. 19/2019
s. 163(2).

(2) An SDA provider who provides an SDA enrolled dwelling must not unreasonably refuse to give consent to the SDA resident's request to keep a pet in the SDA enrolled dwelling.

S. 498M(3)
inserted by
No. 19/2019
s. 163(2).

(3) For the purposes of subsection (2), the grounds on which an SDA provider may reasonably refuse to give consent to an SDA resident's request to keep a pet are—

(a) that another SDA resident living in the same SDA enrolled dwelling under an SDA residency agreement—

(i) has not consented to the keeping of the pet at the SDA enrolled dwelling; and

(ii) has reasonable grounds for not consenting to keeping the pet at the SDA enrolled dwelling; or

(b) that the pet would create a health and safety hazard were it kept at the SDA enrolled dwelling.

Note

See section 54 of the **Equal Opportunity Act 2010** in relation to the provision of accommodation to a person with a disability who has an assistance dog.

498N Duties of SDA resident

(1) An SDA resident must—

- (a) maintain the SDA enrolled dwelling in a manner that does not create a fire, health or safety hazard; and
- (b) after becoming aware of any damage to the SDA enrolled dwelling give notice to the SDA provider specifying the nature of the damage; and
- (c) contribute to the cost of repairing damage notified under paragraph (b) that the SDA resident caused; and
- (d) pay the rent on the due date and in the manner specified in the SDA residency agreement.

S. 498N
inserted by
No. 38/2018
s. 293.

S. 498N(1)(c)
amended by
No. 19/2019
s. 164(1).

(2) An SDA resident must not—

- (a) use the SDA enrolled dwelling for a purpose that is illegal at common law or under an Act; and
- (b) by act or omission endanger the safety of other SDA residents or staff at the SDA enrolled dwelling; and
- (c) cause serious disruption to the proper use and enjoyment of the SDA enrolled dwelling by other SDA residents; and
- (d) damage or destroy any part of the SDA enrolled dwelling; and
- (e) install any fixtures in the SDA enrolled dwelling without first obtaining the consent in writing of the SDA provider; and
- (f) keep a pet without obtaining the consent of the SDA provider.

S. 498N(2)(d)
amended by
No. 19/2019
s. 164(1).

S. 498N(2)(e)
amended by
No. 19/2019
s. 164(2)(a).

S. 498N(2)(f)
inserted by
No. 19/2019
s. 164(2)(b).

S. 498N(3)
inserted by
No. 19/2019
s. 164(3).

- (3) An SDA resident does not owe a duty specified in subsection (1)(c) or breach a duty specified in subsection (2)(d) if any of the following significantly contributed to the damage or destruction caused—
- (a) fair wear and tear;
 - (b) accidental damage;
 - (c) the reasonable use of the SDA enrolled dwelling;
 - (d) the reasonable use of any aids, equipment, fixtures and fittings used in the SDA enrolled dwelling;
 - (e) the act or omission of a person who is not the SDA resident;
 - (f) any behaviour arising from the SDA resident's disability including behaviour in response to circumstances aggravating to the SDA resident's disability or emotional wellbeing;
 - (g) a failure by a person to implement or comply with the SDA resident's support plan or NDIS behaviour support plan;
 - (h) the unauthorised use of a restrictive practice within the meaning of the **Disability Act 2006**;
 - (i) circumstances suggesting that the SDA resident has been subjected to abuse or neglect.

Division 5—Repairs and maintenance

S. 498O
inserted by
No. 38/2018
s. 293.

498O Application and definition

- (1) This Division does not apply to fixtures, furniture or equipment supplied by the SDA resident.

(2) In this Division—

chosen person means a person—

- (a) who is an SDA resident's guardian; or
- (ab) who is an SDA resident's administrator;
or
- (b) who is a family member of the SDA
resident; or
- (c) who is chosen by an SDA resident, by
mutual agreement with the person, to
act on behalf of the SDA resident under
this Division.

S. 498O(2)
def. of *chosen
person*
amended by
No. 19/2019
s. 165.

498P Application to Tribunal for urgent repairs

- (1) An SDA resident or a chosen person may apply to the Tribunal for an order requiring the SDA provider to carry out specified urgent repairs if the SDA resident or their chosen person has taken reasonable steps to arrange for the SDA provider to immediately carry out the repairs and the SDA resident or their chosen person is unable to get the SDA provider to carry out the repairs.
- (2) The Tribunal must hear an application under subsection (1) within 2 business days after the application is made.
- (3) Without limiting the matters which the Tribunal may consider in determining an application under this section, the Tribunal must consider the Director's guidelines.

S. 498P
inserted by
No. 38/2018
s. 293.

S. 498P(3)
inserted by
No. 19/2019
s. 166.

498Q Application to Director to investigate need for non-urgent repairs

- (1) An SDA resident or their chosen person may apply to the Director to investigate whether the SDA provider is in breach of a duty to ensure that the SDA enrolled dwelling is maintained in good repair if—

S. 498Q
inserted by
No. 38/2018
s. 293.

- (a) the SDA resident or their chosen person has given the SDA provider written notice advising the SDA provider that repairs (other than urgent repairs) are required to the SDA enrolled dwelling; and
 - (b) the SDA provider has not carried out the repairs within 14 days after being given the notice.
- (2) On an application under subsection (1), the Director—
 - (a) must investigate; and
 - (b) may negotiate arrangements for the carrying out of repairs if the Director is satisfied that the SDA provider is in breach of the duty to maintain the SDA enrolled dwelling in good repair; and
 - (c) must give a written report to the SDA resident and their chosen person (if any).

S. 498R
inserted by
No. 38/2018
s. 293.

498R Application to Tribunal for non-urgent repairs

- (1) An SDA resident or their chosen person may apply to the Tribunal for an order requiring the SDA provider to carry out specified non-urgent repairs if—
 - (a) the SDA resident or their chosen person has received the report of the Director under section 498Q; and
 - (b) the SDA resident or their chosen person is still of the view that satisfactory arrangements have not been made for the carrying out of the repairs.
- (2) An application under subsection (1) must be made within 60 days of receiving the report of the Director under section 498Q.

- (3) An SDA resident or their chosen person may apply to the Tribunal for an order requiring the SDA provider to carry out specified repairs without the report of the Director under section 498Q if the SDA resident or their chosen person has not received that report within 90 days after the SDA resident or their chosen person applied for that report.
- (4) The Tribunal must hear an application under subsection (1) or (3) within 7 days after the application is made.

S. 498R(4)
inserted by
No. 19/2019
s. 167.

498S What can the Tribunal order?

S. 498S
inserted by
No. 38/2018
s. 293.

- (1) If the Tribunal is satisfied that the SDA provider is in breach of the duty to maintain the SDA enrolled dwelling in good repair, the Tribunal may order—
- (a) the SDA provider to carry out specified repairs; and
- (b) the use of a suitably qualified person to carry out the repairs.
- (2) If the Tribunal makes an order requiring the SDA provider to carry out specified repairs, the order must specify the repairs and the time within which they must be carried out.

S. 498S(1)
substituted by
No. 19/2019
s. 168(1).

S. 498S(2)
amended by
No. 19/2019
s. 168(2).

Division 6—Rights of entry

498T Purpose of Division

- (1) The purpose of this Division is to provide for the rights of entry of an SDA provider and their agent to an SDA enrolled dwelling provided by the SDA provider.

S. 498T
inserted by
No. 38/2018
s. 293.

- (2) This Division does not affect the exercise of a right of entry conferred on any of the following by or under this Act or another Act in respect of an SDA enrolled dwelling—
- (a) the Public Advocate;
 - (b) a community visitor;
 - (c) the Senior Practitioner;
 - (d) the NDIA;
 - (e) the NDIS Quality and Safeguards Commission.

S. 498U
inserted by
No. 38/2018
s. 293.

498U Entry of SDA enrolled dwelling

An SDA provider or their agent has a right to enter an SDA enrolled dwelling together with any persons who are necessary to achieve the purpose of the entry—

- (a) at any time agreed with the SDA resident if—
 - (i) in the case of an SDA enrolled dwelling occupied by one SDA resident, the SDA resident has consented to the entry not more than 7 days before the entry; or
 - (ii) in the case of an SDA enrolled dwelling occupied by more than one SDA resident, all the SDA residents have consented to the entry not more than 7 days before the entry; or
- (b) at any time between 8 a.m. and 6 p.m. on any day (except a public holiday)—
 - (i) for a purpose set out in section 498V(1)(a) or (b), if at least 48 hours notice has been given to the SDA resident or SDA residents in accordance with section 498X; or

S. 498U(b)
substituted by
No. 19/2019
s. 169.

- (ii) for a purpose set out in section 498V(1)(c) or (f), if at least 24 hours notice has been given to the SDA resident or SDA residents in accordance with section 498X; or
- (iii) for a purpose set out in section 498V(1)(d) or (e), if at least 7 days notice has been given to the SDA resident or SDA residents in accordance with section 498X.

498V Grounds for entry of SDA enrolled dwelling

S. 498V
inserted by
No. 38/2018
s. 293.

- (1) A right of entry in respect of an SDA enrolled dwelling may be exercised if—
 - (a) before giving notice of entry, a notice to vacate or a notice of intention to vacate the SDA enrolled dwelling had been given and entry is required to show the SDA enrolled dwelling to a prospective party to an SDA residency agreement or tenancy agreement in respect of the SDA enrolled dwelling; or
 - (b) the SDA enrolled dwelling is to be sold or used as security for a loan and entry is required to show the SDA enrolled dwelling to a prospective buyer or lender; or
 - (c) entry is required to enable the SDA provider to carry out a duty under this Act or any other Act; or
 - (d) entry is required for valuation purposes; or
 - (e) entry is required to enable inspection of the SDA enrolled dwelling and entry for that purpose has not been made within the last 6 months; or
 - (f) entry is required to undertake maintenance or repairs or for the purposes of maintenance or repairs.

S. 498V(2)(a)
amended by
No. 19/2019
s. 170(1).

- (2) An SDA provider may enter an SDA enrolled dwelling without giving notice of entry only if—
- (a) the SDA resident agrees, or if there are multiple SDA residents, all the SDA residents agree to the entry at the time entry is sought; or
 - (b) there is an emergency; or
 - (c) if the SDA provider believes on reasonable grounds that entry is necessary to protect the health or safety of the SDA resident or of any other person at the SDA enrolled dwelling; or
 - (d) if the SDA provider believes on reasonable grounds that the SDA resident has abandoned the SDA enrolled dwelling; or
 - (e) it is necessary to do so to undertake urgent repairs.

S. 498V(3)
substituted by
No. 19/2019
s. 170(2).

- (3) A right of entry in respect of an SDA enrolled dwelling for a purpose referred to in subsection (1)(a) may only be exercised—
- (a) in the period within 21 days before the termination date specified in the notice to vacate or notice of intention to vacate; and
 - (b) up to twice a week, unless otherwise agreed with the SDA resident or, if there are multiple SDA residents, all the SDA residents; and
 - (c) for a period of no longer than one hour, unless a longer period is agreed with the SDA resident or, if there are multiple SDA residents, all the SDA residents.

S. 498V(3A)
inserted by
No. 19/2019
s. 170(3).

- (3A) The following apply in respect of entry to an SDA enrolled dwelling for a purpose referred to in subsection (1)(b)—

- (a) the right of entry may only be exercised—
 - (i) if the SDA provider has given the SDA resident or, if there are multiple SDA residents, all the SDA residents, notice of intention to sell in the form approved by the Director at least 14 days before entry is proposed; and
 - (ii) if the SDA provider has made all reasonable efforts to agree with the SDA resident or, if there are multiple SDA residents in the SDA enrolled dwelling, all the SDA residents, on days and times for the property to be available for inspection; and
 - (iii) up to twice a week, unless otherwise agreed with the SDA resident or, if there are multiple SDA residents in the SDA enrolled dwelling, all the SDA residents; and
 - (iv) for a period of no longer than one hour, unless a longer period is agreed with the SDA resident or, if there are multiple SDA residents in the SDA enrolled dwelling, all the SDA residents;
 - (b) SDA residents at the SDA enrolled dwelling are entitled to the prescribed compensation for sales inspections.
- (3B) If an SDA provider exercises a right of entry under subsection (1)(b), the SDA provider must pay the SDA resident or SDA residents (as appropriate) the prescribed compensation for each sales inspection.

**S. 498V(3B)
inserted by
No. 19/2019
s. 170(3).**

(4) Despite subsection (1), in the case of a first SDA residency agreement entered into between an SDA provider and an SDA resident in respect of an SDA enrolled dwelling, a right of entry referred to in subsection (1)(e) may only be exercised after the end of the first 3 months of the occupation of the SDA enrolled dwelling by the SDA resident under that SDA residency agreement.

S. 498V(5)
inserted by
No. 19/2019
s. 170(4).

(5) For the purposes of subsection (2)(d), if the SDA provider believes on reasonable grounds that the SDA resident has abandoned an SDA enrolled dwelling occupied by multiple SDA residents (*other SDA residents*), the SDA provider must not enter those parts of the SDA enrolled dwelling exclusively occupied by the other SDA residents.

S. 498W
inserted by
No. 38/2018
s. 293.

498W Manner of entry

A person exercising a right of entry under this Division—

- (a) must do so in a reasonable manner; and
- (b) must not stay or permit others to stay at the SDA enrolled dwelling longer than is necessary to achieve the purpose of the entry without the SDA resident's consent or, if there are multiple SDA residents, without the consent of all the SDA residents.

S. 498W(b)
amended by
No. 19/2019
s. 171.

S. 498X
inserted by
No. 38/2018
s. 293.

498X What must be in a notice of entry?

- (1) A notice of entry must—
 - (a) be in writing; and
 - (b) state why the SDA provider or their agent wishes to enter; and
 - (c) be given—
 - (i) by post; or

- (ii) by delivering it personally to the SDA resident between the hours of 8 a.m. and 6 p.m.; or
 - (iii) by electronic communication in accordance with the **Electronic Transactions (Victoria) Act 2000**.
- (2) If the SDA enrolled dwelling is occupied by more than one SDA resident, a notice of entry must be given to each SDA resident.
- (3) A notice given under subsection (2) is sufficient if the notice is in or to the like effect of a notice given under subsection (1).

498Y SDA resident has duty to permit entry

An SDA resident has a duty to permit a person exercising a right of entry in accordance with this Division to enter the SDA enrolled dwelling.

S. 498Y
inserted by
No. 38/2018
s. 293.

498Z What if damage is caused during entry

- (1) An SDA resident occupying an SDA enrolled dwelling may apply to the Tribunal for an order for compensation if an SDA provider or their agent or a person accompanying the SDA provider or their agent causes damage to the SDA resident's goods in the SDA enrolled dwelling when exercising a right of entry under section 498U.
- (2) If an application is made under subsection (1), the Tribunal—
- (a) may make an order for payment of any compensation that it thinks fit if it is satisfied that damage was caused to the SDA resident's goods in the SDA enrolled dwelling; or
 - (b) may refuse to make an order.

S. 498Z
inserted by
No. 38/2018
s. 293.

Division 7—Rent

- S. 498ZA**
inserted by
No. 38/2018
s. 293.
- 498ZA Rent**
- An SDA provider may charge an SDA resident rent.
- S. 498ZB**
inserted by
No. 38/2018
s. 293.
- 498ZB Notice of increase in rent**
- (1) An SDA provider must give at least 60 days notice in writing of a proposed increase in rent to an SDA resident and the SDA resident's guardian or SDA resident's administrator (if any).
- S. 498ZB(1A)**
inserted by
No. 19/2019
s. 172.
- (1A) The notice of proposed rent increase must include—
- (a) the amount of the rent increase; and
 - (b) the method by which the rent increase was calculated; and
 - (c) a statement informing the SDA resident of the SDA resident's right under section 498ZG to apply within 30 days after the notice is given to the Director to investigate and report on the proposed rent.
- (2) An SDA provider must not increase the rent payable by an SDA resident at intervals of less than 6 months.
- (3) Any proposed increase in the rent made in contravention of this section is invalid.
- S. 498ZC**
inserted by
No. 38/2018
s. 293,
amended by
No. 19/2019
s. 173.
- 498ZC Limit on payment in advance**
- An SDA provider must not require an SDA resident to pay the rent more than 30 days in advance.
- Penalty: 60 penalty units.

498ZD Where and how is rent to be paid?

- (1) Subject to this section, the rent under an SDA residency agreement is payable in the manner (if any) specified in the agreement.
- (2) An SDA provider or that person's agent must not require an SDA resident to pay rent by a cheque or other negotiable instrument that is post-dated.
Penalty: 60 penalty units.
- (3) An SDA provider or that person's agent must ensure that a rent payment method that incurs no additional costs (other than bank fees or account fees payable on the SDA resident's bank account) is reasonably available to the SDA resident.
Penalty: 60 penalty units.
- (4) Without limiting how rent is paid, an SDA provider or that person's agent must permit the SDA resident to pay the rent by the following payment methods—
 - (a) the bill paying service known as Centrepay administered by the Department of Human Services of the Commonwealth;
 - (b) any prescribed payment method.
- (5) Without limiting subsection (4), by agreement, the SDA provider and the SDA resident may change the manner in which rent is payable under the SDA residency agreement.
- (6) The SDA provider or that person's agent must give the SDA resident information about any costs (including third party transaction fees, direct debit dishonour fees and any other electronic payment facility fees) that the SDA resident may incur by using a particular payment method before the

S. 498ZD
inserted by
No. 38/2018
s. 293,
amended by
No. 19/2019
s. 174(1)(2)
(ILA s. 39B(1)).

S. 498ZD(2)
inserted by
No. 19/2019
s. 174(2).

S. 498ZD(3)
inserted by
No. 19/2019
s. 174(2).

S. 498ZD(4)
inserted by
No. 19/2019
s. 174(2).

S. 498ZD(5)
inserted by
No. 19/2019
s. 174(2).

S. 498ZD(6)
inserted by
No. 19/2019
s. 174(2).

SDA resident consents to use the payment method.

S. 498ZE
inserted by
No. 38/2018
s. 293.

498ZE Receipts for rent

S. 498ZE(1)
amended by
No. 19/2019
s. 175(1).

- (1) A person who receives a payment of rent from, or on behalf of, an SDA resident must give a written receipt in accordance with this section to the person making the payment—
- (a) immediately, if the payment is made in person; or
 - (b) if the payment is not made in person and a receipt is requested at the time of making the payment, within 5 business days of receiving the payment.

Penalty: 25 penalty units.

S. 498ZE(2)
amended by
No. 19/2019
s. 175(2).

- (2) If a person receives a payment of rent from an SDA resident and a written receipt is not required to be given under subsection (1), the person must keep a record of the payment of rent until the earlier of—
- (a) the end of 12 months after receiving the payment; or
 - (b) if an SDA resident, an SDA resident's guardian or SDA resident's administrator (if any) requests a copy of the record before the end of 12 months after making the payment, the provision of a copy of the record to the SDA resident and the SDA resident's guardian or SDA resident's administrator.

Penalty: 25 penalty units.

- (3) If an SDA resident or an SDA resident's guardian or SDA resident's administrator (if any) requests a copy of a record under subsection (2)(b) before the end of 12 months after making the payment of rent, a person who keeps a record under subsection (2) must provide a copy of that record to the SDA resident and the SDA resident's guardian or SDA resident's administrator (if any) within 5 business days after receiving the request.

S. 498ZE(3)
amended by
No. 19/2019
s. 175(3).

Penalty: 25 penalty units.

- (4) For the purposes of subsection (2), a record must contain information which enables the details specified in paragraphs (a) to (e) of subsection (5) to be identified.
- (5) A receipt under this section must be signed by the person who receives the payment and must state—
- (a) the name of the SDA resident and the SDA enrolled dwelling; and
 - (b) the date of receipt; and
 - (c) the period for which payment is made; and
 - (d) the amount paid; and
 - (e) the fact that the payment is for rent.
- (6) The regulations may provide that a prescribed person is exempt from subsection (1), (2) or (5) subject to the conditions, if any, specified in the regulations.

498ZF SDA resident's goods not to be taken for rent

A person must not take or dispose of an SDA resident's goods on account of any rent owing by the SDA resident.

Penalty: 60 penalty units.

S. 498ZF
inserted by
No. 38/2018
s. 293,
amended by
No. 19/2019
s. 176.

S. 498ZG
inserted by
No. 38/2018
s. 293.

498ZG SDA resident may complain to Director about excessive rent

- (1) An SDA resident may apply to the Director to investigate and report if the SDA resident has received a notice of a rent increase and the SDA resident considers that the proposed rent is excessive.
- (2) An application under subsection (1) must be made in writing within 30 days after the notice of the rent increase is given.
- (3) As soon as practicable after receiving an application, the Director must—
 - (a) carry out an investigation; and
 - (b) give a written report to—
 - (i) the SDA resident and the SDA resident's guardian or SDA resident's administrator (if any); and
 - (ii) the SDA provider.
- (4) The report of the Director must—
 - (a) include a statement informing the SDA resident of the SDA resident's right under section 498ZH to apply to the Tribunal for an order in respect of the proposed rent; and
 - (b) take into account the matters referred to in sections 498ZI(2) and 498ZJ.

S. 498ZH
inserted by
No. 38/2018
s. 293.

498ZH Disputes relating to increase in rent

- (1) After receiving a report from the Director under section 498ZG, the SDA resident may apply to the Tribunal for an order declaring the proposed rent excessive.
- (2) An application to the Tribunal under subsection (1) must be made within 30 days after the Director has issued a report under section 498ZG.

- (3) If an SDA resident has received a notice of rent increase and the SDA resident considers that the proposed rent is excessive, the SDA resident may, with the leave of the Tribunal, apply to the Tribunal for an order declaring the proposed rent excessive without receiving a report from the Director under section 498ZG.
- (4) An application under subsection (3) may only be made after the end of 30 days after the notice of the rent increase is given.
- (5) The Tribunal may grant leave under subsection (3) if it is satisfied that there are reasonable grounds for the SDA resident's failure to request the Director to investigate and report under section 498ZG.

498ZI What can the Tribunal order on an application relating to increase in rent

S. 498ZI
inserted by
No. 38/2018
s. 293.

- (1) On an application made under section 498ZH, the Tribunal may do any of the following—
 - (a) make an order declaring that the proposed rent is excessive;
 - (b) make an order directing that for the period specified in the order the rent must not exceed the amount specified in the order;
 - (c) dismiss the application.
- (2) For the purposes of subsection (1), the Tribunal must have regard to—
 - (a) the rent paid by any other SDA residents in the SDA enrolled dwelling; and
 - (b) the rent payable by SDA residents occupying similar SDA enrolled dwellings in similar locations; and

- (c) the state of repair and general condition of the SDA enrolled dwelling; and
 - (d) the number of increases in the preceding 24 months, the amount of each increase and the timing of those increases; and
 - (e) any changes in the condition of the SDA enrolled dwelling since the SDA resident commenced occupation; and
 - (f) any improvements made to the SDA enrolled dwelling that should not result in an increase because they were made by or on behalf of the SDA resident; and
 - (g) the National Disability Insurance Scheme Act 2013 of the Commonwealth; and
 - (h) any prescribed Act, regulation or instrument.
- (3) The amount specified in an order made under subsection (1)(b) must not be less than the amount payable by the SDA resident before the notice was given under section 498ZB.
- (4) Sections 50(3) and 51(1), (2) and (5) of the **Victorian Civil and Administrative Tribunal Act 1998** do not apply in relation to a proceeding for review of a decision to issue a notice of a proposed increase in rent.

S. 498ZJ
inserted by
No. 38/2018
s. 293.

498ZJ Tribunal must dismiss certain applications

- (1) The Tribunal must dismiss an application made under section 498ZH if the increase in rent is proportionate to an increase in the Commonwealth disability support pension and any Commonwealth rent assistance.

(2) In this section—

Commonwealth disability support pension means an amount determined in accordance with Part 2.3 of the Social Security Act 1991 of the Commonwealth;

Commonwealth rent assistance means an amount determined in accordance with Part 3.7 of the Social Security Act 1991 of the Commonwealth.

498ZK Payment of increased amount pending Tribunal decision

S. 498ZK
inserted by
No. 38/2018
s. 293.

- (1) Pending the decision of the Tribunal under section 498ZI, the SDA resident must pay, from the time the proposed increase is to apply, whichever is the lesser of—
 - (a) the increased rent specified in the notice of increase under section 498ZB; or
 - (b) 110% of the rent payable immediately before the notice of increase under section 498ZB was given.
- (2) If the Tribunal makes an order under section 498ZI(1) other than an order dismissing the application, the Tribunal may also make an order—
 - (a) requiring that any excess rent paid by the SDA resident, from the time that the increase took effect until the date of the order, be refunded; and
 - (b) specifying the procedure for the refund to the SDA resident.

Division 8—Other charges

498ZL Certain charges prohibited

S. 498ZL
inserted by
No. 38/2018
s. 293.

S. 498ZL(1)
amended by
No. 19/2019
s. 177(1).

- (1) A person must not demand or receive from an SDA resident any bond in relation to the SDA residency agreement.

Penalty: 60 penalty units.

S. 498ZL(2)
amended by
No. 19/2019
s. 177(2).

- (2) A person must not demand or receive from an SDA resident any guarantee for the performance of the SDA resident's duties under the SDA residency agreement.

Penalty: 60 penalty units.

S. 498ZL(3)
amended by
No. 19/2019
s. 177(3).

- (3) A person must not demand or receive from an SDA resident a charge or indemnity for a charge in relation to the making, continuation or renewal of an SDA residency agreement that is a premium, bonus, commission or key money.

Penalty: 60 penalty units.

S. 498ZL(4)
amended by
No. 19/2019
s. 177(4).

- (4) A person must not demand or receive from an SDA resident under a proposed SDA residency agreement a charge in relation to the inspection of the SDA enrolled dwelling by an SDA resident.

Penalty: 60 penalty units.

S. 498ZL(5)
amended by
No. 19/2019
s. 177(6).

- (5) A person must not demand or receive from an SDA resident a charge or indemnity for a charge in relation to—
- (a) the first issue of a rent payment card under an SDA residency agreement; or

- (b) the establishment or use of direct debit facilities or any other electronic payment facility for payment of rent under an SDA residency agreement.

S. 498ZL(5)(b)
amended by
No. 19/2019
s. 177(5).

Penalty: 60 penalty units.

- (6) This section does not prevent the charging of a prescribed charge under an SDA residency agreement.

498ZM SDA provider's liability for various utility charges

S. 498ZM
inserted by
No. 38/2018
s. 293,
amended by
No. 19/2019
s. 178(2) (ILA
s. 39B(1)).

- (1) An SDA provider is liable for—

- (a) the installation costs and charges in respect of the initial connection to an SDA enrolled dwelling of any electricity, water, gas, bottled gas or oil supply service; and
- (b) all charges related to the supply of sewerage services or the supply or use of drainage services to or at the SDA enrolled dwelling; and
- (c) all rates, taxes or charges payable under any Act other than charges payable by the SDA resident under this Part.

S. 498ZM(1)(b)
amended by
No. 19/2019
s. 178(1)(a).

S. 498ZM(1)(c)
inserted by
No. 19/2019
s. 178(1)(b).

- (2) If an SDA resident has been charged for excessive usage of a service at the SDA enrolled dwelling caused by a fault in infrastructure or any fixtures or buildings at or connected to the SDA enrolled dwelling, the SDA provider is liable for that part of the charge that is additional to an amount of ordinary usage by the SDA resident.

S. 498ZM(2)
inserted by
No. 19/2019
s. 178(2).

Example

Excessive usage charges caused by a leak in the underground pipe of a water service connected to an SDA enrolled dwelling.

S. 498ZN
inserted by
No. 38/2018
s. 293,
amended by
No. 19/2019
s. 179.

498ZN SDA provider must not seek overpayment for utility charge

An SDA provider must not seek payment or reimbursement for a cost or charge, or specify a cost or charge for utilities at an SDA enrolled dwelling under an SDA residency agreement, that is more than the amount that the relevant utility supplier would have charged the SDA resident for the supply or use of electricity, water, bottled gas or oil by an SDA resident at an SDA enrolled dwelling.

Penalty: 60 penalty units.

Division 9—Compensation and compliance

S. 498ZO
inserted by
No. 38/2018
s. 293.

498ZO Definitions

In this Division—

S. 498ZO
def. of *breach of duty notice*
inserted by
No. 19/2019
s. 180(2).

breach of duty notice means a notice served under section 498ZP;

S. 498ZO
def. of *duty provision*
amended by
No. 19/2019
s. 180(1).

duty provision, in relation to an SDA enrolled dwelling, means—

- (a) section 498M(1)(a), (b), (c), (d), (e) or (f) or (2); or
- (b) section 498N(1)(a), (c), (d) or (2)(d), (e) or (f); or
- (c) section 498Y;

required time means 14 days.

S. 498ZP
inserted by
No. 38/2018
s. 293.

498ZP Breach of duty notice

- (1) Subject to subsection (2), a person to whom a duty is owed under a duty provision, or that person's agent, may give a breach of duty notice to a person in breach of that duty.

(2) An SDA provider, or their agent, must not give a breach of duty notice to an SDA resident unless the SDA provider believes on reasonable grounds that the SDA resident has breached the duty.

S. 498ZP(2)
amended by
No. 19/2019
s. 181(1).

(2A) An SDA resident does not breach a duty provision if any of the following have significantly contributed to the breach of the duty provision—

S. 498ZP(2A)
inserted by
No. 19/2019
s. 181(2).

- (a) in the case of damage to, or destruction of, an SDA enrolled dwelling, fair wear and tear;
- (b) in the case of damage to, or destruction of, an SDA enrolled dwelling, accidental damage;
- (c) the reasonable use of the SDA enrolled dwelling;
- (d) the reasonable use of any aids, equipment, fixtures and fittings used in the SDA enrolled dwelling;
- (e) the act or omission of a person who is not the SDA resident;
- (f) any behaviour arising from the SDA resident's disability including circumstances aggravating to the SDA resident's disability or emotional wellbeing;
- (g) a failure by a person to implement or comply with the SDA resident's support plan or NDIS behaviour support plan;
- (h) the unauthorised use of a restrictive practice within the meaning of the **Disability Act 2006**;
- (i) circumstances suggesting that the SDA resident has been subjected to abuse or neglect.

- (3) A notice under subsection (1) must—
- (a) specify the breach; and
 - (b) give details of the loss or damage, if any, caused by the breach; and
 - (c) require the person, within the required time after receiving the notice—
 - (i) to remedy the breach if possible; or
 - (ii) to compensate the person to whom the duty is owed; and
 - (d) state that the person in breach must not commit a similar breach again; and
 - (e) state that if the notice is not complied with—
 - (i) an application for compensation or a compliance order may be made to the Tribunal; or
 - (ii) if section 498ZZA applies, a notice of intention to vacate may be given; or
 - (iii) if section 498ZX applies, a notice to vacate may be given; and
 - (f) be in writing; and
 - (g) be addressed to the person allegedly in breach of the duty or the person's agent; and
 - (h) be signed by the person to whom the duty is owed or by that person's agent.

S. 498ZQ
inserted by
No. 38/2018
s. 293.

498ZQ Application for compensation or compliance order for breach of duty

- (1) If a breach of duty notice is not complied with, the person who gave it may apply to the Tribunal for a compensation order or a compliance order within 90 days after the end of the required time.

- (2) Subject to section 115 of the **Australian Consumer Law and Fair Trading Act 2012**, the Director may make an application under this section on behalf of the person who gave the notice without that person's consent.

498ZR Matters to be considered by Tribunal

- (1) The Tribunal, in hearing an application under section 498ZQ, may take into account—

S. 498ZR
(Heading)
amended by
No. 19/2019
s. 182(1).

S. 498ZR
inserted by
No. 38/2018
s. 293,
amended by
No. 19/2019
s. 182(3) (ILA
s. 39B(1)).

* * * * *

S. 498ZR(1)(a)
repealed by
No. 19/2019
s. 182(2).

- (b) whether or not the person from whom compensation is claimed has taken all reasonable steps to comply with the duties under this Part or under the SDA residency agreement in respect of which the claim is made; and
- (c) whether or not the applicant has consented to the failure to comply with the duties in respect of which the claim is made; and
- (d) whether or not money has been paid to or recovered by the applicant by way of compensation; and
- (e) whether any reduction or refund of rent has been made to the applicant; and
- (f) whether or not action has been taken by the applicant to mitigate the loss or damage; and
- (g) any offer of compensation; and

S. 498ZR(2)
inserted by
No. 19/2019
s. 182(3).

- (h) if a claim is made with respect to damage to property, any action taken by the person from whom compensation is claimed to repair the damage at that person's own expense.
- (2) In hearing an application under section 498ZQ in respect of a breach of duty notice given to an SDA resident, the Tribunal must consider whether any of the following significantly contributed to the breach of duty in respect of which the claim was made—
- (a) in the case of damage to, or destruction of, property, fair wear and tear;
 - (b) in the case of damage to, or destruction of, property, accidental damage;
 - (c) the reasonable use of the SDA enrolled dwelling;
 - (d) the reasonable use of any aids, equipment, fixtures and fittings used in the SDA enrolled dwelling;
 - (e) the act or omission of a person who is not the SDA resident;
 - (f) any behaviour arising from the SDA resident's disability including circumstances aggravating to the SDA resident's disability or emotional wellbeing;
 - (g) a failure by a person to implement or comply with the SDA resident's support plan or NDIS behaviour support plan;
 - (h) the unauthorised use of a restrictive practice within the meaning of the **Disability Act 2006**;
 - (i) circumstances suggesting that the SDA resident has been subjected to abuse or neglect.

498ZS Orders of Tribunal

S. 498ZS
inserted by
No. 38/2018
s. 293.

- (1) In the case of an application under section 498ZQ, if the Tribunal is satisfied that the person was entitled to give the notice and the notice was not complied with, it may make any or all of the following orders—
 - (a) the person in breach must remedy the breach as specified in the order;
 - (b) the person in breach must pay compensation as specified in the order;
 - (c) the person in breach must refrain from committing a similar breach.
- (2) In the case of an application under section 498ZQ, if the Tribunal is satisfied that compensation should be paid it may make an order directing a person to pay compensation as specified in the order.
- (2A) In the case of an application under section 498ZQ, if after considering the matters specified in section 498ZR(2), the Tribunal is not satisfied that an SDA provider was entitled to give the breach of duty notice, the Tribunal must dismiss the application and declare the notice to be invalid.
- (3) If an order for compensation is made in favour of an SDA resident, the order may specify that the compensation be in the form of a refund or reduction of the rent payable by the SDA resident.

S. 498ZS(2A)
inserted by
No. 19/2019
s. 183.

498ZT Compensation for unpaid rent

S. 498ZT
inserted by
No. 38/2018
s. 293.

An SDA provider is not entitled to claim compensation under this Part for a failure of an SDA resident to pay rent under an SDA residency agreement unless the rent is unpaid for at least 14 days after it has accrued due.

S. 498ZU
inserted by
No. 38/2018
s. 293.

498ZU What powers does a court have to award compensation?

If a party to an SDA residency agreement is convicted of an offence against this Part, the court before which that person is convicted may, on application by the other party to the SDA residency agreement, order the first party to pay the applicant compensation for loss or damage suffered by the applicant because of the commission of that offence.

S. 498ZV
inserted by
No. 38/2018
s. 293.

498ZV Notice of temporary relocation

- (1) An SDA provider may give an SDA resident a written notice of temporary relocation from an SDA enrolled dwelling in the following circumstances—
 - (a) the SDA resident by act or omission endangers the safety of other SDA residents or staff at the SDA enrolled dwelling;
 - (b) the SDA resident is causing serious disruption to the proper use and enjoyment of the SDA enrolled dwelling by other SDA residents;
 - (c) the SDA resident is a danger to themselves and the SDA resident can no longer be appropriately supported in the SDA enrolled dwelling;
 - (ca) the SDA resident can no longer be appropriately supported in the SDA enrolled dwelling;
 - (d) it is for the SDA resident's safety or wellbeing;

S. 498ZV
(1)(ca)
inserted by
No. 19/2019
s. 184(1)(a).

- (e) the SDA resident has caused serious damage or destroyed any part of the SDA enrolled dwelling;
S. 498ZV(1)(e) substituted by No. 19/2019 s. 184(1)(b).
 - (f) the SDA resident has used the SDA enrolled dwelling for a purpose that is illegal at common law or under an Act;
 - (g) specialist disability accommodation will no longer be provided at the SDA enrolled dwelling;
 - (h) the SDA enrolled dwelling is no longer suitable for the provision of specialist disability accommodation;
 - (i) the SDA provider intends to repair, renovate or reconstruct the SDA enrolled dwelling immediately after the notice of temporary relocation has effect and has obtained all necessary permits and consents to carry out the work and the work cannot be properly carried out unless the SDA resident vacates the area or room of the SDA enrolled dwelling exclusively occupied by the SDA resident.
S. 498ZV(1)(i) amended by No. 19/2019 s. 184(1)(c).
- (2) A notice of temporary relocation—
- (a) has effect immediately from the time it is given or from the time specified in the notice of temporary relocation; and
 - (b) must specify a relocation period—
 - (i) ending not more than 90 days after the date on which the notice has effect; and
 - (ii) if the notice is given in the circumstances referred to in subsection (1)(i), not longer than the time required to carry out the work.

S. 498ZV(2A)
inserted by
No. 19/2019
s. 184(2).

- (2A) An SDA provider must not give a notice of temporary relocation on a ground specified in subsection (1)(e) to an SDA resident if any of the following have significantly contributed to the serious damage or destruction caused—
- (a) fair wear and tear;
 - (b) accidental damage;
 - (c) the reasonable use of the SDA enrolled dwelling;
 - (d) the reasonable use of any aids, equipment, fixtures and fittings used in the SDA enrolled dwelling;
 - (e) the act or omission of a person who is not the SDA resident;
 - (f) any behaviour arising from the SDA resident's disability including circumstances aggravating to the SDA resident's disability or emotional wellbeing;
 - (g) a failure by a person to implement or comply with the SDA resident's support plan or NDIS behaviour support plan;
 - (h) the unauthorised use of a restrictive practice within the meaning of the **Disability Act 2006**;
 - (i) circumstances suggesting that the SDA resident has been subjected to abuse or neglect.
- (3) An SDA provider must not give a notice under subsection (1)(i) unless the SDA provider has first offered an equivalent area or room to the SDA resident and the SDA resident has refused to occupy that area or room in place of the SDA resident's current area or room, if—

- (a) the proposed repairs will affect an SDA resident's area or room but will not affect all the areas or rooms in an SDA enrolled dwelling; and
- (b) an area or room equivalent to the SDA resident's area or room at an equivalent rent is available in the SDA enrolled dwelling.
- (4) The SDA provider must notify the Chief Executive Officer of the NDIA, the Public Advocate and the Director of the details of a notice of temporary relocation within 24 hours of the notice being given to an SDA recipient. S. 498ZV(4)
amended by
No. 19/2019
s. 184(3)(4).
- Penalty: 60 penalty units.
- (5) The SDA provider must notify the Public Advocate and the Director of the details of a notice of temporary relocation within 24 hours of the notice being given to a CoS supported accommodation client. S. 498ZV(5)
amended by
No. 19/2019
s. 184(5)(6).
- Penalty: 60 penalty units.
- (6) If a notice of temporary relocation is given on the grounds specified in subsection (1)(a), (b), (c), (d), (e) or (f), the SDA provider must take reasonable steps to notify the SDA resident's Supported Independent Living provider as soon as possible. S. 498ZV(6)
amended by
No. 19/2019
s. 184(7).
- (7) During the relocation period specified under subsection (2), the SDA resident is excluded from the SDA enrolled dwelling as specified in the notice of temporary relocation and is to be relocated by the SDA provider in alternative accommodation that is suitable for the SDA resident for the duration of the temporary relocation period specified in the notice under subsection (2). S. 498ZV(7)
amended by
No. 19/2019
s. 184(8).

S. 498ZV(9)(b)
amended by
No. 19/2019
s. 184(9).

- (8) Except as provided in subsection (9), an SDA provider must not use the area or room that was exclusively occupied by the SDA resident for another SDA resident during the relocation period specified in the notice of temporary relocation.
- (9) If the notice of temporary relocation was given on a ground other than the ground specified in subsection (1)(i), the area or room that was exclusively occupied by the SDA resident may only be used—
 - (a) for emergency purposes; or
 - (b) on a short term basis for the purpose of providing short-term accommodation to a carer of a person with a disability.
- (10) At the expiry of a notice of temporary relocation, an SDA resident is entitled to return to the SDA enrolled dwelling unless a notice to vacate has been given under section 498ZX.
- (11) During the period that an SDA resident is relocated to alternative accommodation, including another SDA enrolled dwelling, the SDA resident is to be taken to be accommodated in emergency or transitional housing and this Division does not apply in respect of that accommodation.
- (12) The SDA provider must take reasonable steps to resolve the matter giving rise to the issue of the notice of temporary relocation as soon as is reasonably possible in the circumstances.
- (13) The taking of reasonable steps to resolve the matter giving rise to the issue of the notice of temporary relocation does not affect the continued application of that matter as the ground for the issue of the notice of temporary relocation.

Division 10—Termination and notices to vacate

498ZW Termination of SDA residency agreement

- (1) An SDA residency agreement is terminated in the following circumstances—
- (a) by agreement in writing between the SDA provider and the SDA resident;
 - (b) if the SDA provider gives the SDA resident a notice to vacate in accordance with section 498ZX, on the earliest of—
 - (i) the day on which the SDA resident vacates the SDA enrolled dwelling; or
 - (ii) if a possession order is made, at the end of the day before the day on which the possession of the SDA enrolled dwelling is delivered up to the SDA provider;
 - (c) if the SDA provider's registration under the NDIS as a registered provider is revoked, 90 days after the day the registration was revoked;
 - (d) if the SDA enrolled dwelling occupied by the SDA resident ceases to be an SDA enrolled dwelling, 90 days after the day the SDA enrolled dwelling ceased to be enrolled;
 - (e) by notice of intention to vacate given to the SDA provider by, or on behalf of, the SDA resident in accordance with section 498ZZA;
 - (f) if the SDA resident dies;
 - (g) if the SDA resident is deemed to have abandoned the SDA enrolled dwelling under section 498ZWA;

S. 498ZW
inserted by
No. 38/2018
s. 293,
amended by
No. 19/2019
s. 185(4) (ILA
s. 39B(1)).

S. 498ZW
(1)(b)(ii)
substituted by
No. 19/2019
s. 185(1).

S. 498ZW
(1)(g)
substituted by
No. 19/2019
s. 185(2).

Residential Tenancies Act 1997
No. 109 of 1997
Part 12A—Specialist disability accommodation

S. 498ZW
(1)(h)(i)
repealed by
No. 19/2019
s. 185(3).

* * * * *

- (j) the SDA provider contravenes section 498D(1) and the SDA resident wishes to terminate the SDA residency agreement as a consequence of that contravention;
- (k) if the Tribunal makes an order terminating the SDA residency agreement;
- (l) if a mortgagee in respect of an SDA enrolled dwelling gives a notice to vacate under section 498ZZD and—
 - (i) the SDA resident vacates the SDA enrolled dwelling on or after the termination date specified in the notice; or
 - (ii) the SDA residency agreement terminates in accordance with section 498ZZL.

S. 498ZW(2)
inserted by
No. 19/2019
s. 185(4).

- (2) For the purposes of subsection (1)(j), an SDA resident must give an SDA provider a notice of intention to terminate.

S. 498ZW(3)
inserted by
No. 19/2019
s. 185(4).

- (3) A notice of intention to terminate must—
 - (a) be given in writing; and
 - (b) specify the date on which the SDA resident intends to terminate the SDA residency agreement.

S. 498ZW(4)
inserted by
No. 19/2019
s. 185(4).

- (4) A notice of intention to terminate may be given in writing on behalf of the SDA resident by the SDA resident's guardian or the SDA resident's administrator, if any.

- (5) The SDA provider must notify the following persons of the details of a notice of intention to terminate given under subsection (2) within 24 hours of the notice being received by the SDA provider—
- (a) if the notice was given by an SDA recipient, the Chief Executive Officer of the NDIA;
 - (b) the Public Advocate;
 - (c) if the notice was not given under subsection (4), the SDA resident's guardian or the SDA resident's administrator, as the case requires;
 - (d) the Director.

S. 498ZW(5)
inserted by
No. 19/2019
s. 185(4).

498ZWA Order of Tribunal that premises are abandoned

- (1) If an SDA provider believes that an SDA resident has abandoned an SDA enrolled dwelling, the SDA provider may apply to the Tribunal for an order declaring that the SDA resident has abandoned it.
- (2) An application under subsection (1) must be heard by the Tribunal within 5 business days after the application is made.
- (3) On an application under subsection (1), the Tribunal by order may declare that the SDA enrolled dwelling was abandoned by the SDA resident on a day specified by the Tribunal.
- (4) The SDA resident is deemed to have abandoned the SDA enrolled dwelling on that specified day.

S. 498ZWA
inserted by
No. 19/2019
s. 186.

498ZX Notice to vacate by SDA provider

- (1) An SDA provider may give an SDA resident a written notice to vacate an SDA enrolled dwelling if—
 - (a) the SDA resident owes at least 14 days unpaid rent to the SDA provider; or

S. 498ZX
inserted by
No. 38/2018
s. 293.

- | | |
|---|--|
| | (b) the SDA resident by act or omission endangers the safety of other SDA residents or staff at the SDA enrolled dwelling; or |
| | (c) the SDA resident is causing serious disruption to the proper use and enjoyment of the SDA enrolled dwelling by other SDA residents; or |
| | (d) the SDA resident is a danger to themselves and the SDA resident can no longer be appropriately supported in the SDA enrolled dwelling; or |
| S. 498ZX(1)(e)
substituted by
No. 19/2019
s. 187(1). | (e) the SDA resident can no longer be appropriately supported in the SDA enrolled dwelling; or |
| S. 498ZX(1)(f)
substituted by
No. 19/2019
s. 187(1). | (f) the SDA resident has caused serious damage or destroyed any part of the SDA enrolled dwelling; or |
| | (g) the SDA resident has used the SDA enrolled dwelling for a purpose that is illegal at common law or under an Act; or |
| S. 498ZX(1)(h)
amended by
No. 19/2019
s. 187(2)(a). | (h) the SDA provider intends to repair, renovate or reconstruct the SDA enrolled dwelling immediately after the termination date and has obtained all necessary permits and consents to carry out the work and the work cannot be properly carried out unless the SDA resident vacates the SDA enrolled dwelling; or |
| Note to
s. 498ZX(1)(h)
inserted by
No. 19/2019
s. 187(3). | Note
See section 498ZZZPA. |
| S. 498ZX
(1)(ha)
inserted by
No. 19/2019
s. 187(2)(b). | (ha) the SDA provider intends to demolish the SDA enrolled dwelling immediately after the termination date and has obtained all necessary permits and consents to carry out |

the demolition and the demolition cannot be properly carried out unless the SDA resident vacates the SDA enrolled dwelling; or

* * * * *

**S. 498ZX
(1)(i)(j)
repealed by
No. 19/2019
s. 187(4).**

- (k) the SDA enrolled dwelling is to be sold or offered for sale with vacant possession; or
 - (l) the SDA resident has failed to comply with an order of the Tribunal under section 498ZS.
- (2) A notice to vacate on a ground specified under subsection (1)(a) cannot be given unless—
- (a) a breach of duty notice has been given to the SDA resident in respect of that ground; and
 - (b) the SDA resident has not taken steps to remedy the breach within 14 days after the notice was given to the SDA resident.
- (3) A notice to vacate on a ground specified under subsection (1)(b), (c), (d), (e), (f), (g), (h), (i) or (j) cannot be given unless—
- (a) a temporary relocation notice was validly issued under section 498ZV on a ground corresponding to that specified in the notice to vacate; and
 - (b) the temporary relocation notice was given at least 24 hours previously.
- (4) A notice to vacate on a ground specified under subsection (1)(b), (c), (d), (e), (f) or (g) cannot be given unless an SDA provider reasonably believes that the conduct constituting the breach is likely to reoccur.

S. 498ZX(4A)
inserted by
No. 19/2019
s. 187(5).

- (4A) An SDA provider must not give an SDA resident a notice to vacate on a ground specified in subsection (1)(f) or (1)(l) if any of the following have significantly contributed to the serious damage or destruction caused, or the failure to comply with an order—
- (a) in the case of damage to, or destruction of, an SDA enrolled dwelling, fair wear and tear;
 - (b) in the case of damage to, or destruction of, an SDA enrolled dwelling, accidental damage;
 - (c) the reasonable use of the SDA enrolled dwelling;
 - (d) the reasonable use of any aids, equipment, fixtures and fittings used in the SDA enrolled dwelling;
 - (e) the act or omission of a person who is not the SDA resident;
 - (f) any behaviour arising from the SDA resident's disability including circumstances aggravating to the SDA resident's disability or emotional wellbeing;
 - (g) a failure by a person to implement or comply with the SDA resident's support plan or NDIS behaviour support plan;
 - (h) the unauthorised use of a restrictive practice within the meaning of the **Disability Act 2006**;
 - (i) circumstances suggesting that the SDA resident has been subjected to abuse or neglect.

S. 498ZX(4B)
inserted by
No. 19/2019
s. 187(5).

- (4B) An SDA provider must not give an SDA resident a notice to vacate under subsection (1)(l) if the Tribunal's order under section 498ZS was in

respect of a breach of duty notice given under section 498N(2)(f).

(5) If—

- (a) the proposed repairs, renovations or reconstruction will affect the area or room of the SDA enrolled dwelling exclusively occupied by the SDA resident but will not affect all of the areas or rooms of the SDA enrolled dwelling; and
- (b) an area or room equivalent to the SDA resident's area or room at an equivalent rent is available in the SDA enrolled dwelling—

the SDA provider must not give the notice under subsection (1)(h) unless the SDA provider has first offered an equivalent room to the SDA resident and the SDA resident has refused to occupy that room in place of the SDA resident's current room.

(6) A notice to vacate under this section—

- (a) must specify the ground on which the notice is given; and
- (ab) must specify that the SDA resident may apply to the Tribunal under section 498ZZC for review of the notice within 90 days of the day on which the notice was issued; and
- (ac) in the case of a notice to vacate given on a ground under subsection (1)(h) or (k), must be accompanied by documentary evidence, as approved by the Director from time to time, which supports the reasons for giving the notice; and

S. 498ZX
(6)(ab)
inserted by
No. 19/2019
s. 187(6).

S. 498ZX
(6)(ac)
inserted by
No. 19/2019
s. 187(6).

Note

See section 486A.

- (b) must specify a termination date that is not less than 90 days after the date on which the notice is given; and
- (c) must be signed by the SDA provider; and
- (d) must be given to—
 - (i) the SDA resident; and
 - (ii) the SDA resident's guardian or the SDA resident's administrator, if any.

S. 498ZX(7)
amended by
No. 19/2019
s. 187(7)(8).

- (7) The SDA provider must notify the Chief Executive Officer of the NDIA, the Public Advocate and the Director of the details of a notice to vacate within 24 hours of the notice being given to an SDA recipient.

Penalty: 60 penalty units.

S. 498ZX(8)
amended by
No. 19/2019
s. 187(9)(10).

- (8) The SDA provider must notify the Public Advocate and the Director of the details of a notice to vacate within 24 hours of the notice being given to a CoS supported accommodation client.

Penalty: 60 penalty units.

S. 498ZX(9)
amended by
No. 19/2019
s. 187(11).

- (9) If a notice to vacate is given on the grounds specified in subsection (1)(b), (c), (d), (e) or (f), the SDA provider must take reasonable steps to notify the SDA resident's Supported Independent Living provider as soon as possible.

S. 498ZY
inserted by
No. 38/2018
s. 293.

498ZY Effect of notice to vacate

- (1) If a notice to vacate is issued while a notice of temporary relocation is in force—
 - (a) the notice of temporary relocation continues in force only until the end of the period of notice applying to the notice to vacate; and

- (b) the SDA provider must continue to provide alternative accommodation for the SDA resident until—
 - (i) the end of the period of notice applying to the notice to vacate; or
 - (ii) if a review or appeal is lodged, until the review or appeal is determined; or
 - (iii) other alternative accommodation is provided for the SDA resident.
- (2) The SDA provider cannot accommodate another SDA resident in the vacancy in the SDA enrolled dwelling created by a notice of temporary relocation or notice to vacate before the end of the relevant period under subsection (1)(b).

498ZZ What if 2 or more notices can be given?

If a person is or becomes entitled to give 2 or more notices of intention to vacate or notices to vacate under this Division—

- (a) the invalidity of any of the notices does not affect the validity of any other notice; and
- (b) each valid notice has full force and effect.

498ZZA Notice of intention to vacate by SDA resident

- (1) An SDA resident may give a notice of intention to vacate to the SDA provider at any time.
- (2) A notice of intention to vacate must—
 - (a) be given in writing; and
 - (b) specify the date on which the SDA resident intends to vacate the SDA enrolled dwelling.
- (3) A notice of intention to vacate may be given in writing on behalf of the SDA resident by the SDA resident's guardian or the SDA resident's administrator, if any.

S. 498ZZ
inserted by
No. 38/2018
s. 293.

S. 498ZZA
inserted by
No. 38/2018
s. 293.

S. 498ZZA(4)
amended by
No. 19/2019
s. 188(a).

(4) The SDA provider must notify the following persons of the details of a notice of intention to vacate given under this section within 24 hours of the notice being received by the SDA provider—

(a) if the notice was given by an SDA recipient, the Chief Executive Officer of the NDIA;

(b) the Public Advocate;

S. 498ZZA
(4)(c)
amended by
No. 19/2019
s. 188(b).

(c) if the notice was not given under subsection (3), the SDA resident's guardian or the SDA resident's administrator, as the case requires;

S. 498ZZA
(4)(d)
inserted by
No. 19/2019
s. 188(c).

(d) the Director.

S. 498ZZB
inserted by
No. 38/2018
s. 293.

498ZZB Withdrawal of notice

(1) A notice of temporary relocation, a notice to vacate or a notice of intention to vacate may only be withdrawn if a notice of withdrawal is given.

(2) A notice of withdrawal may be given at any time before the SDA resident has vacated the SDA enrolled dwelling.

(3) A notice of withdrawal must be—

(a) in writing; and

(b) signed by the person who gave the notice that is being withdrawn; and

(c) given to the person who was given the notice that is being withdrawn.

S. 498ZZB(4)
inserted by
No. 19/2019
s. 189.

(4) If a notice of withdrawal is given under this section, the SDA provider must give details of the notice of withdrawal to the Director within 14 days after the notice is given.

498ZZC Application to the Tribunal for review of notice to vacate

**S. 498ZZC
inserted by
No. 38/2018
s. 293.**

- (1) An SDA resident may apply to the Tribunal for a review of the issue of a notice to vacate on the ground that the notice to vacate is not valid because—
 - (a) of a defect on the face of the notice to vacate; or
 - (b) the notice to vacate was not issued in accordance with this Part; or
 - (c) the ground on which the notice was issued is not established.
- (2) If an application under subsection (1) is made to the Tribunal in respect of a ground specified in section 498ZX(1)(b), (c), (d), (e), (f), (g), (h), (i), or (j) and the SDA provider first gave the SDA resident a notice of temporary relocation on a ground corresponding to that given in the notice to vacate, the Tribunal must also consider the validity of the notice of temporary relocation.
- (3) An application to the Tribunal under subsection (1) must be made within 90 days of the day on which the notice to vacate was issued.
- (4) On an application under this section, the Tribunal may only determine whether or not the notice to vacate is valid and if subsection (2) applies, whether or not the notice of temporary relocation is valid.
- (5) The Tribunal may—
 - (a) if it determines that the notice to vacate is valid, confirm the notice to vacate; or
 - (b) if it determines that the notice to vacate is not valid, declare that the notice to vacate is invalid; or

- (c) if subsection (2) applies and it determines that the notice of temporary relocation is not valid, declare the notice of temporary relocation and the notice to vacate are invalid; or
- (d) dismiss the application.

S. 498ZZCA
inserted by
No. 19/2019
s. 190.

498ZZCA Notice by owner

- (1) If an SDA provider under an SDA residency agreement is not the owner of the SDA enrolled dwelling to which the agreement relates, the owner may exercise a right of the SDA provider—
 - (a) to give the SDA resident a notice to vacate the SDA enrolled dwelling; or
 - (b) to recover possession of the SDA enrolled dwelling; or
 - (c) to give a breach of duty notice that applies to the SDA residency agreement.
- (2) A notice to vacate given in accordance with a right conferred under subsection (1) does not have effect unless it specifies a termination date on or after the day on which the SDA provider's interest in the premises ends.
- (3) If the owner exercises a right conferred by subsection (1) in relation to an SDA residency agreement, Divisions 2, 9, 10, 11 and 13 have effect as if a reference to an SDA provider under an SDA residency agreement included a reference to the owner.

S. 498ZZD
inserted by
No. 38/2018
s. 293.

498ZZD Notice to vacate by mortgagee

- (1) If a mortgagee in respect of an SDA enrolled dwelling becomes entitled to possession of, or to exercise a power of sale in respect of, the SDA enrolled dwelling under a mortgage, the mortgagee may give the SDA resident a notice to vacate the SDA enrolled dwelling.

- (2) A notice to vacate under this section—
- (a) must specify the ground on which the notice is given; and
 - (b) must specify a termination date that is not less than 90 days after the date on which the notice is given; and
 - (c) must be signed by the mortgagee; and
 - (d) must be given to—
 - (i) the SDA resident; and
 - (ii) the SDA resident's guardian or the SDA resident's administrator, if any.

- (3) The mortgagee must notify the Chief Executive Officer of the NDIA, the Public Advocate and the Director of the details of a notice to vacate within 24 hours of the notice being given to an SDA recipient.

S. 498ZZD(3)
amended by
No. 19/2019
s. 191(1)(2).

Penalty: 60 penalty units.

- (4) The mortgagee must notify the Public Advocate and the Director of the details of a notice to vacate within 24 hours of the notice being given to a CoS supported accommodation client.

S. 498ZZD(4)
amended by
No. 19/2019
s. 191(3)(4).

Penalty: 60 penalty units.

Division 11—Regaining possession—possession orders and warrants

Subdivision 1—Applications for possession orders

498ZZE Application for possession order by SDA provider

- (1) An SDA provider may apply to the Tribunal for a possession order for the area or room of an SDA enrolled dwelling exclusively occupied by an SDA resident if the SDA provider has given the SDA resident a notice to vacate the SDA enrolled dwelling.

S. 498ZZE
inserted by
No. 38/2018
s. 293.

- (2) An application under subsection (1) may be made at any time after the notice to vacate is given but not later than 30 days after the termination date specified in the notice to vacate.
- (3) An SDA provider may apply to the Tribunal for a possession order for an SDA enrolled dwelling if—
 - (a) the SDA resident has given the SDA provider a notice of intention to vacate the SDA enrolled dwelling; and
 - (b) the SDA resident has not delivered up vacant possession of the area or room of the SDA enrolled dwelling that was occupied by the SDA resident.

S. 498ZZF
inserted by
No. 38/2018
s. 293,
amended by
No. 19/2019
s. 192 (ILA
s. 39B(1)).

498ZZF Application for possession order by mortgagee

- (1) A mortgagee of an SDA enrolled dwelling may apply to the Tribunal for a possession order for the SDA enrolled dwelling if—
 - (a) the mortgagee has given each SDA resident occupying the SDA enrolled dwelling a notice to vacate the SDA enrolled dwelling that specifies a termination date not less than 90 days after the notice is issued; and
 - (b) one or more of the SDA residents that were occupying the SDA enrolled dwelling have not delivered up vacant possession of the SDA enrolled dwelling within 90 days after the date of the notice to vacate given under paragraph (a).
- (2) An application under this section must be accompanied by a copy of any court order which shows the mortgagee's entitlement to possession and to exercise a power of sale.

S. 498ZZF(2)
inserted by
No. 19/2019
s. 192.

498ZZG Hearing of application for possession order

The Tribunal must not determine an application for a possession order under this Division before the termination date specified in the notice to vacate or notice of intention to vacate accompanying the application.

S. 498ZZG
inserted by
No. 38/2018
s. 293.

498ZZH Order of Tribunal

- (1) The Tribunal must make a possession order on an application under section 498ZZE(1) requiring an SDA resident to vacate the SDA enrolled dwelling on the day specified in the order if the Tribunal is satisfied that—
 - (a) the SDA provider was entitled to give the notice to vacate; and
 - (b) the notice to vacate has not been withdrawn; and
 - (c) in the circumstances of the particular application, it is reasonable and proportionate having regard to section 498ZZHA.
- (1A) The Tribunal must have regard to the Director's guidelines when determining an application for a possession order which is supported by a notice to vacate.
- (2) A possession order must not be made in respect of more than one SDA resident.
- (3) The day specified in the order of the Tribunal under subsection (1) cannot be earlier than the termination date specified in the notice to vacate.
- (4) The Tribunal must make a possession order on an application under section 498ZZE(3) requiring an SDA resident to vacate an SDA enrolled dwelling

S. 498ZZH
inserted by
No. 38/2018
s. 293.

S. 498ZZH
(1)(b)
amended by
No. 19/2019
s. 193(1)(a).

S. 498ZZH
(1)(c)
inserted by
No. 19/2019
s. 193(1)(b).

S. 498ZZH(1A)
inserted by
No. 19/2019
s. 193(2).

on the day specified in the order if the Tribunal is satisfied that—

- (a) a notice of intention to vacate has been given by an SDA resident and has not been withdrawn; and
- (b) the SDA provider acted reasonably by relying on the notice of intention to vacate; and
- (c) in the circumstances of the particular application, it is reasonable and proportionate having regard to section 498ZZHA.

S. 498ZZH
(4)(b)
amended by
No. 19/2019
s. 193(3)(a).

S. 498ZZH
(4)(c)
inserted by
No. 19/2019
s. 193(3)(b).

S. 498ZZHA
inserted by
No. 19/2019
s. 194.

498ZZHA What is reasonable and proportionate

For the purposes of determining whether it is reasonable and proportionate to make a possession order, the Tribunal must have regard to the following—

- (a) whether the matter giving rise to the possession order is trivial;
- (b) whether the matter giving rise to the possession order was caused by a person other than the SDA resident;
- (c) as the case requires, the behaviour of the SDA provider or the SDA provider's agent;
- (d) the interests of other SDA residents living in the SDA enrolled dwelling;
- (e) whether suitable alternative accommodation is likely to be available for the SDA resident's use;
- (f) whether an order other than a possession order can be made;
- (g) whether another course of action is reasonably available;

- (h) any other matter the Tribunal considers relevant.

498ZZI Order to be dismissed or adjourned in certain circumstances

S. 498ZZI
inserted by
No. 38/2018
s. 293.

- (1) The Tribunal may dismiss or adjourn an application for a possession order under section 498ZZE(1) that is supported by a notice to vacate issued on the ground specified in section 498ZX(1)(a) if the Tribunal considers that satisfactory arrangements have been or can be made to avoid financial loss to the SDA provider.
- (2) An adjournment may be on any terms the Tribunal considers appropriate.
- (3) On the resumption of an adjourned hearing of an application for a possession order that is supported by a notice to vacate issued on the ground specified in section 498ZX(1)(a), the Tribunal—
 - (a) may make a possession order if the SDA resident has continued to accrue arrears of rent during the adjournment period; and
 - (b) must dismiss the application if the SDA resident—
 - (i) has paid all the arrears which were the subject of the original application; and
 - (ii) has accrued no further arrears of rent from the time of the application to the date of resumption of the adjourned hearing.

498ZZJ Contents of possession order

S. 498ZZJ
inserted by
No. 38/2018
s. 293.

- (1) A possession order must include—
 - (a) the day (being a day not more than 30 days after the day on which the possession order is made) by which the SDA resident must vacate the SDA enrolled dwelling; and

- (b) a direction to the SDA resident to vacate the SDA enrolled dwelling by the day specified in the order; and
- (c) a direction to the principal registrar to issue a warrant of possession in accordance with section 498ZZP on the application of the person who obtained the possession order.

S. 498ZZJ(1A)
inserted by
No. 19/2019
s. 195.

- (1A) For the purposes of subsection (1)(a), if the Tribunal makes a possession order for an application which is supported by a notice to vacate, in determining the day on which the SDA resident must vacate the SDA enrolled dwelling, the Tribunal must take into account any requirements the SDA resident may have to access suitable alternative accommodation.
- (2) A possession order for an SDA enrolled dwelling must also include a warning that if the SDA resident fails to comply with the direction in subsection (1)(b), the SDA resident may be forcibly vacated from the SDA enrolled dwelling by a police officer or an authorised person carrying out a warrant of possession.

S. 498ZZK
inserted by
No. 38/2018
s. 293.

498ZZK Order not to be made in certain circumstances

Despite section 498ZZH, the Tribunal must not make a possession order if—

- (a) the application for the order is supported with a notice to vacate issued on a ground specified in section 498ZX(1)(l); and
- (b) the Tribunal is satisfied that—
 - (i) the failure to comply with an order of the Tribunal was trivial or has been remedied as far as possible; and

S. 498ZZK
(b)(ii)
repealed by
No. 19/2019
s. 196.

* * * * *

- (iii) the breach of duty is not a recurrence of a previous breach of duty.

498ZZL Effect of possession order for SDA enrolled dwelling

S. 498ZZL
inserted by
No. 38/2018
s. 293.

If a possession order is made under this Division in respect of an SDA enrolled dwelling, the SDA residency agreement terminates at the end of the day before the day on which possession of the SDA enrolled dwelling is delivered up to the SDA provider or mortgagee.

498ZZM What must the possession order provide?

S. 498ZZM
inserted by
No. 38/2018
s. 293.

A possession order under this Division must—

- (a) direct the principal registrar to issue without delay a warrant of possession against a person issued with a notice to vacate who occupies an SDA enrolled dwelling; or
- (b) provide that notice in the form prescribed by the rules of the Tribunal be served without delay on the person issued with a notice to vacate who occupies the SDA enrolled dwelling requiring them—
 - (i) to appear before the Tribunal on a day after the end of 7 days after the giving of the notice; and
 - (ii) to show cause why a warrant of possession should not be issued.

498ZZN Notice to occupiers of SDA enrolled dwelling

S. 498ZZN
inserted by
No. 38/2018
s. 293.

If a possession order under this Division requires a notice to be given, the applicant for the order must—

- (a) serve a copy of the order and the notice on the person issued with a notice to vacate who occupies the SDA enrolled dwelling; and

- (b) if any other person who is not subject to the possession order occupies the SDA enrolled dwelling, notify that person that the person is not subject to the possession order.

S. 498ZZO
inserted by
No. 38/2018
s. 293.

498ZZO Effect of this Subdivision

This Subdivision has effect despite anything to the contrary in any other provision of this Act.

Subdivision 2—Warrants of possession

S. 498ZZP
inserted by
No. 38/2018
s. 293.

498ZZP Issue of warrant of possession

- (1) A person who obtains a possession order under section 498ZZE may apply to the principal registrar for a warrant of possession—
 - (a) immediately if the possession order so provides; or
 - (b) within 6 months after the date of the possession order if the SDA resident fails to comply with the possession order.
- (2) An application under this section must be accompanied by the prescribed fee, if any.
- (3) Subject to this Subdivision, a warrant must be executed within the time stated in the possession order which must not exceed 30 days after the date of issue of the warrant.

S. 498ZZQ
inserted by
No. 38/2018
s. 293.

498ZZQ Extension of time for warrant to be executed

- (1) On the application of the person who obtained the warrant of possession, the Tribunal may from time to time make an order extending the time by which the warrant of possession may be executed.
- (2) An order under subsection (1) must not at any one time extend the time by which a warrant of possession may be executed by more than 30 days after the day on which the time for execution of the warrant would otherwise expire.

- (3) An order may not be made under subsection (1) if the time for execution of the warrant has passed.

498ZZR Warrant of possession

S. 498ZZR
inserted by
No. 38/2018
s. 293.

- (1) A warrant of possession must—
- (a) be in a form prescribed by rules made under the **Victorian Civil and Administrative Tribunal Act 1998**; and
 - (b) be directed—
 - (i) to a police officer; or
 - (ii) to an authorised person; and
 - (c) give brief details of the possession order; and
 - (d) be signed by the principal registrar.
- (2) The warrant of possession authorises the person to whom it is directed—
- (a) to enter the SDA enrolled dwelling, by force if necessary; and
 - (b) with such assistance as is necessary to compel persons referred to in the possession order to vacate the SDA enrolled dwelling and give possession of the dwelling to the applicant for the order under which the warrant is issued.
- (3) A warrant of possession does not authorise the person to whom it is directed to remove any goods from an SDA enrolled dwelling.
- (4) Entry under a warrant of possession must not be made—
- (a) between the hours of 6 p.m. and 8 a.m.; or
 - (b) on a Sunday or public holiday.
- (5) The Minister may authorise any person or class of persons either generally or in a particular case to execute warrants of possession.

S. 498ZZS
inserted by
No. 38/2018
s. 293.

**498ZZS Lapsing of possession order and lapsing
or cancellation of warrant of possession**

- (1) A possession order under this Division is discharged if the applicant for the order does not, within 6 months after the date of the order, apply for the issue of a warrant of possession.
- (2) A warrant of possession under this Part lapses if it is not executed—
 - (a) subject to paragraph (b), within the time stated in the order; or
 - (b) if the Tribunal has extended the time within which a warrant may be executed, within the further time that the Tribunal by order allows.
- (3) The Tribunal may at any time cancel a warrant of possession issued under this Division.

S. 498ZZT
inserted by
No. 38/2018
s. 293.

498ZZT Execution of warrant

As soon as practicable, but not later than 60 days after a warrant of possession is issued, the person to whom the warrant is addressed must—

- (a) return the warrant to the principal registrar; and
- (b) specify in writing whether the warrant has or has not been executed.

S. 498ZZU
inserted by
No. 38/2018
s. 293.

498ZZU Postponement of issue of warrant in certain cases

- (1) The Tribunal may provide in a possession order under this Subdivision in relation to an SDA enrolled dwelling that the issue of a warrant of possession be postponed for a period specified in the order, if the Tribunal is satisfied that—
 - (a) the SDA resident would suffer hardship if the issue of the warrant were not postponed; and

- (b) the hardship would be greater than any hardship that the SDA provider or mortgagee (as the case may be) would suffer because of the postponement.
- (2) The period of postponement specified in the order must not exceed 30 days after the date that the order is made.
- (3) This section does not apply to an order made on the application of an SDA provider who has given a notice to vacate the SDA enrolled dwelling on a ground specified in section 498ZX(1)(b), (d) or (e).

498ZZV Immediate issue of warrant if failure to pay rent during postponement

On the application of an SDA provider or mortgagee of an SDA enrolled dwelling, the Tribunal may order that a warrant of possession be issued without delay if the Tribunal is satisfied that, during any period of postponement specified in an order under section 498ZZU, an SDA resident has failed to pay any rent accrued due.

S. 498ZZV
inserted by
No. 38/2018
s. 293,
substituted by
No. 19/2019
s. 197.

Division 12—Goods left behind by SDA residents

Subdivision 1—Preliminary

498ZZW Application of this Division

This Division applies if the SDA residency agreement in respect of an SDA enrolled dwelling has been terminated and goods have been left behind at the dwelling.

S. 498ZZW
inserted by
No. 38/2018
s. 293.

498ZZX Definitions

In this Division—

former SDA provider means an SDA provider who, before the termination of an SDA residency agreement, was—

S. 498ZZX
inserted by
No. 38/2018
s. 293.

- (a) registered under the NDIS to be a registered provider of supports; and
- (b) the owner or leaseholder of the SDA enrolled dwelling;

former SDA resident means an SDA resident who received funding under the NDIS to reside in an SDA enrolled dwelling before the termination of an SDA residency agreement;

SDA enrolled dwelling owner, in relation to an SDA enrolled dwelling in respect of which an SDA residency agreement has been terminated, means—

- (a) the former SDA provider; and
- (b) either—
 - (i) the owner of the SDA enrolled dwelling; or
 - (ii) a mortgagee who has secured a mortgage against the SDA enrolled dwelling;

stored goods, in relation to an SDA enrolled dwelling in respect of which an SDA residency agreement has been terminated, means goods left behind on the SDA enrolled dwelling which are stored in accordance with section 498ZZZD.

Subdivision 2—Personal documents left behind

S. 498ZZY
inserted by
No. 38/2018
s. 293.

498ZZY What happens if personal documents are left behind?

If a former SDA resident leaves behind personal documents, the SDA enrolled dwelling owner—

- (a) must take reasonable care of the personal documents for a period of 90 days; and

- (b) may remove but must not destroy or dispose of the personal documents, except in accordance with this Division; and
- (c) must take reasonable steps to notify the former SDA resident and the former SDA resident's administrator or the former SDA resident's guardian (if any) as to when and from where the documents may be collected.

498ZZZ Disposal of personal documents after 90 days

S. 498ZZZ
inserted by
No. 38/2018
s. 293.

- (1) If personal documents have not been reclaimed by a person who has a lawful right to the documents by the end of the 90 day period referred to in section 498ZZY(a), then at the end of that period, the SDA enrolled dwelling owner may dispose of the personal documents.
- (2) Nothing in this section affects the operation of any other Act or law affecting the destruction or disposition of the documents.

Note

It may be an offence under certain legislation of the State and Commonwealth to destroy certain documents.

498ZZZA Reclaiming personal documents before disposal

S. 498ZZZA
inserted by
No. 38/2018
s. 293.

- (1) A person who has a lawful right to the personal documents may reclaim the personal documents left behind at any time before they are disposed of in accordance with section 498ZZZ.
- (2) If a person who has a lawful right to personal documents reclaims the documents, the SDA enrolled dwelling owner must not refuse to give the documents to that person.

S. 498ZZZA(2)
amended by
No. 19/2019
s. 198.

Penalty: 150 penalty units in the case of a natural person;
750 penalty units in the case of a body corporate.

Subdivision 3—Goods left behind

S. 498ZZZB
inserted by
No. 38/2018
s. 293.

498ZZZB Application of Subdivision

This Subdivision does not apply to personal documents.

S. 498ZZZC
inserted by
No. 38/2018
s. 293.

498ZZZC Disposal of certain goods left behind

- (1) If goods have been left behind, the SDA enrolled dwelling owner may remove and destroy or dispose of the goods if—
 - (a) the goods are of no monetary value; or
 - (b) the goods are perishable foodstuffs; or
 - (c) the goods are dangerous.
- (2) Despite subsection (1)(a), the SDA enrolled dwelling owner must not remove and destroy or dispose of goods that have been left behind if those goods are prescribed goods.

S. 498ZZZC(2)
substituted by
No. 19/2019
s. 199(1).

S. 498ZZZC(3)
repealed by
No. 19/2019
s. 199(2).

* * * * *

- (4) Nothing in this section affects the operation of any other Act or law affecting the removal, destruction or disposal of goods.

Note

Other legislation of the State and Commonwealth may deal with the disposal of goods for example, the **Dangerous Goods Act 1985**.

S. 498ZZZD
inserted by
No. 38/2018
s. 293,
substituted by
No. 19/2019
s. 200.

498ZZZD What must an SDA enrolled dwelling owner do about goods left behind?

- (1) If a former SDA resident leaves behind goods (other than goods which may be removed and destroyed or disposed of under section 498ZZZC), the SDA enrolled dwelling owner must—

- (a) take reasonable steps to give notice, in the form approved by the Director, to the former SDA resident that the goods have been left behind; and
 - (b) store the goods for a period of at least 14 days, beginning on the day on which the SDA enrolled dwelling owner gave the notice to the former SDA resident.
- (2) A notice under subsection (1)(a) must include a statement informing the former SDA resident of the former SDA resident's rights and obligations in relation to the goods left behind.
- (3) The SDA enrolled dwelling owner may remove the goods from the SDA enrolled dwelling and store them at a safe place.

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S. 498ZZZE
inserted by
No. 38/2018
s. 293,
repealed by
No. 19/2019
s. 201.

498ZZZF When SDA enrolled dwelling owner may sell or dispose of stored goods

S. 498ZZZF
inserted by
No. 38/2018
s. 293,
substituted by
No. 19/2019
s. 202.

- (1) An SDA enrolled dwelling owner may sell or dispose of stored goods if the former SDA resident or other person who has a lawful right to the stored goods has not reclaimed them within 14 days, unless the SDA enrolled dwelling owner has agreed or been ordered by the Tribunal to store the goods for longer than 14 days.
- (2) An SDA enrolled dwelling owner who has agreed or been ordered by the Tribunal to store stored goods for a period of more than 14 days may sell or dispose of the goods in any lawful manner after that period if the former SDA resident or other person who has a lawful right to the stored goods has not reclaimed the goods.

S. 498ZZZG
inserted by
No. 38/2018
s. 293,
substituted by
No. 19/2019
s. 202.

498ZZZG Former SDA resident may request proceeds of sale of goods

- (1) A former SDA resident or other person who has a lawful right to stored goods whose stored goods are sold under this Division may request payment of the proceeds of the sale less the following amounts—
 - (a) the amount of any storage fee for the stored goods;
 - (b) the amount of the reasonable costs of the sale.
- (2) The former SDA resident or other person who has a lawful right to the stored goods must make a request under subsection (1) within 6 months from the date of the sale.
- (3) If the former SDA resident or other person who has a lawful right to the stored goods has not made a request under subsection (1) within 6 months from the date of the sale, the SDA enrolled dwelling owner must pay into the Residential Tenancies Fund the proceeds of the sale less the amounts in subsection (1)(a) and (b) within 30 days after the end of that 6 month period.

Penalty: 30 penalty units.

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S. 498ZZZH
inserted by
No. 38/2018
s. 293,
repealed by
No. 19/2019
s. 203.

S. 498ZZZI
inserted by
No. 38/2018
s. 293.

498ZZZI Purchaser takes good title

A purchaser of stored goods sold in accordance with this Division has good title unless the purchaser has notice of—

- (a) a defect in title or want of title in the former SDA resident; or
- (b) a failure of the SDA enrolled dwelling owner to comply with this Division in relation to the sale of the goods.

Subdivision 4—Orders of Tribunal

498ZZZJ What if goods or documents are disposed of in contravention of this Division?

S. 498ZZZJ
inserted by
No. 38/2018
s. 293.

If the SDA enrolled dwelling owner destroys, disposes of or sells a former SDA resident's goods or personal documents, otherwise than in accordance with this Division, the former SDA resident or a person who has a lawful right to those goods or documents may apply to the Tribunal for compensation.

498ZZZK What if goods or documents are wrongfully retained?

S. 498ZZZK
inserted by
No. 38/2018
s. 293.

If an SDA enrolled dwelling owner wrongfully retains and refuses to give up goods or personal documents left behind, the former SDA resident or a person who has a lawful right to those goods or documents may apply to the Tribunal for an order for the return of the goods or personal documents, or for compensation, or both.

498ZZZL What if goods or documents are damaged or lost?

S. 498ZZZL
inserted by
No. 38/2018
s. 293.

If the SDA enrolled dwelling owner wilfully or recklessly damages or loses stored goods or personal documents, a former SDA resident or a person who has a lawful right to those goods or documents may apply to the Tribunal for compensation.

S. 498ZZZM
inserted by
No. 38/2018
s. 293,
substituted by
No. 19/2019
s. 204.

498ZZZM What if an SDA enrolled dwelling owner refuses to store goods for more than 14 days?

If a former SDA resident or other person who has a lawful right to the goods left behind requests the SDA enrolled dwelling owner to store the goods for more than 14 days and the SDA enrolled dwelling owner refuses, the former SDA resident or other person may apply to the Tribunal for an order requiring the SDA enrolled dwelling owner to store the goods for a period of more than 14 days.

S. 498ZZZN
inserted by
No. 38/2018
s. 293.

498ZZZN What orders can the Tribunal make?

On an application under this Division, the Tribunal may—

- (a) in the case of an application under section 498ZZZJ or 498ZZZL, make an order for compensation; or
- (b) in the case of an application under section 498ZZZK—
 - (i) make an order for the return of the goods or personal documents; or
 - (ii) make an order for compensation; or
 - (iii) make an order for both compensation and the return of the goods or personal documents; or
- (c) in the case of an application under section 498ZZZM, make an order in accordance with that section; or
- (d) dismiss the application.

S. 498ZZZN(c)
amended by
No. 19/2019
s. 205.

Division 13—Offences

498ZZZO Offence relating to entering SDA enrolled dwelling

AN SDA provider or an SDA provider's agent must not, without reasonable excuse, enter an SDA enrolled dwelling otherwise than in accordance with Division 6.

Penalty: 60 penalty units.

S. 498ZZZO
inserted by
No. 38/2018
s. 293,
amended by
No. 19/2019
s. 206.

498ZZZP Offence to obtain possession etc. of SDA enrolled dwelling

- (1) An SDA provider or a person acting on behalf of an SDA provider must not, except in accordance with this Part, require or compel or attempt to compel the SDA resident under the SDA residency agreement to vacate the SDA enrolled dwelling.

Penalty: 300 penalty units in the case of a natural person;

750 penalty units in the case of a body corporate.

S. 498ZZZP
inserted by
No. 38/2018
s. 293.

S. 498ZZZP(1)
amended by
No. 19/2019
s. 207(1).

- (2) An SDA provider or a person acting on behalf of an SDA provider must not, except in accordance with this Part, obtain or attempt to obtain possession of the SDA enrolled dwelling by entering the SDA enrolled dwelling, whether the entry is peaceable or not, unless there are reasonable grounds to believe that the SDA resident has abandoned the SDA enrolled dwelling.

Penalty: 300 penalty units in the case of a natural person;

750 penalty units in the case of a body corporate.

S. 498ZZZP(2)
amended by
No. 19/2019
s. 207(2).

S. 498ZZZPA
inserted by
No. 19/2019
s. 208.

498ZZZPA Prohibition on letting premises used for SDA enrolled dwelling after notice

- (1) An SDA provider who obtains possession of an SDA enrolled dwelling in respect of which a notice to vacate has been given under section 498ZX(1)(h) or (ha) must not enter into, or establish, an agreement under this Act with a person, to use the part of the dwelling to which the notice related, as a residence, before the end of 6 months after the date on which the notice was given.

Penalty: 150 penalty units in the case of a natural person;
750 penalty units in the case of a body corporate.

- (2) Subsection (1) does not apply if the Tribunal determines that—
- (a) the SDA enrolled dwelling may be let; or
 - (b) an SDA residency agreement may be entered into or established in respect of the SDA enrolled dwelling.
- (3) Subsection (1) does not apply if—
- (a) the dwelling ceases to be an SDA enrolled dwelling; or
 - (b) the owner or leaseholder of the SDA enrolled dwelling ceases to be registered under the NDIS to be a registered NDIS provider.

498ZZZQ Offence to make false or fraudulent representation—SDA residency agreement

- (1) A person must not make, in relation to an SDA residency agreement or a proposed SDA residency agreement or a right or duty under this Part, a false misrepresentation as to—
- (a) a provision of this Part; or
 - (b) a term included or to be included in the SDA residency agreement; or
 - (c) a matter affecting a person's rights or duties under this Part or an SDA residency agreement or proposed SDA residency agreement.

Penalty: 300 penalty units in the case of a natural person;

750 penalty units in the case of a body corporate.

- (2) A person must not make, in relation to an SDA residency agreement or a proposed SDA residency agreement or a right or duty under this Part, a fraudulent misrepresentation as to—
- (a) a provision of this Part; or
 - (b) a term included or to be included in the SDA residency agreement; or
 - (c) a matter affecting a person's rights or duties under this Part or an SDA residency agreement or proposed SDA residency agreement.

Penalty: 300 penalty units in the case of a natural person;

750 penalty units in the case of a body corporate.

S. 498ZZZQ
(Heading)
amended by
No. 19/2019
s. 209(1).

S. 498ZZZQ
inserted by
No. 38/2018
s. 293,
amended by
No. 19/2019
s. 209(2)–(4)
(ILA s. 39B(1)).

S. 498ZZZQ(2)
inserted by
No. 19/2019
s. 209(4).

S. 498ZZZR
inserted by
No. 38/2018
s. 293,
amended by
No. 19/2019
s. 210.

498ZZZR Offence to persuade person not to exercise rights or take proceedings

A person must not, in relation to an SDA residency agreement, a proposed SDA residency agreement or a right under this Part, by threat or intimidation persuade or attempt to persuade a party to the SDA residency agreement or proposed SDA residency agreement not to exercise their rights to take or continue proceedings under this Part.

Penalty: 300 penalty units in the case of a natural person;
750 penalty units in the case of a body corporate.

S. 498ZZZS
inserted by
No. 38/2018
s. 293,
amended by
No. 19/2019
s. 211.

498ZZZS Offence to aid, abet, counsel or procure commission of an offence

A person must not, in relation to an SDA residency agreement, a proposed SDA residency agreement or right under this Part, aid, abet, counsel or procure the commission of an offence against this Part.

Penalty: 300 penalty units in the case of a natural person;
750 penalty units in the case of a body corporate.

S. 498ZZZT
inserted by
No. 38/2018
s. 293,
amended by
No. 19/2019
s. 212.

498ZZZT Certain penalties prohibited

A person must not demand or accept from an SDA resident under an SDA residency agreement who has failed to comply with the SDA residency agreement or with any provisions of this Part relating to the SDA residency agreement the payment by reason of the failure of any amount other than—

- (a) subject to this Part, rent under the SDA residency agreement; or

(b) an amount or penalty provided for in this Part.

Penalty: 300 penalty units in the case of a natural person;
750 penalty units in the case of a body corporate.

Part 13—General

Division 1—Offences

499 Confidentiality

- (1) In this section, *relevant person* means a person who is or has been—

S. 499(1)
(a)–(c)
repealed by
No. 52/1998
s. 240(a)(i).

* * * *

- (d) the Director; or

S. 499(1)(e)
substituted by
No. 35/2000
s. 50(b),
amended by
No. 108/2004
s. 117(1)
(Sch. 3
item 174).

- (e) a person employed under Part 3 of the **Public Administration Act 2004** in the administration of this Act; or

- (f) a person to whom the Director had delegated a function or power under this Act.

S. 499(2)
amended by
No. 67/2010
s. 155.

- (2) Subject to subsection (3), a relevant person must not, either directly or indirectly, make a record of or divulge or communicate to any person, information concerning the affairs of a person, being information acquired by the relevant person by reason of his or her office or employment under or for the purposes of this Act.

Penalty: 60 penalty units.

- (3) Nothing in subsection (2) precludes a person from—

- (a) making a record of or divulging or communicating information—

S. 499(3)(a)(i)
amended by
No. 45/2002
s. 97.

- (i) in the performance of a function or the exercise of a power under this or any other Act; or

- (ii) with the written authority of the Minister; or
- (iii) with the written authority of the person to whom the information relates; or
- (b) producing a document to a court in the course of criminal proceedings or in the course of any proceedings under this or any other Act; or
- (c) divulging or communicating to a court in the course of any proceedings referred to in paragraph (b) any matter or thing coming under his or her notice in the performance of a function or the exercise of a power referred to in paragraph (a); or
- (d) providing non-identifying information for statistical purposes only to any person approved by the Minister.

*	*	*	*	*	S. 499(4) repealed by No. 52/1998 s. 240(a)(ii).
*	*	*	*	*	S. 500 repealed by No. 103/2004 s. 62.

501 Offence to make false representation—tenancy agreement or residency right

S. 501
amended by
No. 67/2010
ss 67(a), 156.

A person must not make, in relation to a tenancy agreement, a proposed tenancy agreement, a site agreement, a proposed site agreement or a residency right, a false and fraudulent misrepresentation as to—

- (a) a provision of this Act; or
- (b) a term included or to be included in the tenancy agreement or site agreement; or

S. 501(b)
amended by
No. 67/2010
s. 67(b).

S. 501(c)
amended by
No. 67/2010
s. 67(c).

- (c) a matter affecting a person's rights or duties under this Act or a tenancy agreement, proposed tenancy agreement, site agreement or proposed site agreement.

Penalty: 60 penalty units in the case of a natural person;
300 penalty units in the case of a body corporate.

S. 502
amended by
No. 67/2010
ss 68(a), 157.

502 Offence to persuade person not to exercise rights or take proceedings

A person must not, in relation to a tenancy agreement, a proposed tenancy agreement, a site agreement, a proposed site agreement or a residency right, by threat or intimidation persuade or attempt to persuade—

- (a) a party to the tenancy agreement or proposed tenancy agreement; or
(b) a resident; or
(c) a rooming house owner; or
(d) a caravan owner or a caravan park owner; or

S. 502(d)
amended by
No. 67/2010
s. 68(b).

S. 502(e)
inserted by
No. 67/2010
s. 68(c).

- (e) a party to the site agreement or proposed site agreement—

not to exercise his or her rights to take or continue proceedings under this Act.

Penalty: 60 penalty units in the case of a natural person;
300 penalty units in the case of a body corporate.

503 Offence to aid, abet, counsel or procure commission of offence

S. 503
amended by
No. 67/2010
ss 69, 158.

A person must not in relation to a tenancy agreement, a proposed tenancy agreement, a site agreement, a proposed site agreement or a residency right, aid, abet, counsel or procure the commission of an offence against this Act.

Penalty: 60 penalty units in the case of a natural person;

300 penalty units in the case of a body corporate.

504 Offence to give false information

S. 504
amended by
Nos 52/1998
s. 240(b),
67/2010 s. 159.

A person must not knowingly make a false or misleading statement or provide false or misleading information to the Authority or the Director under this Act.

Penalty: 60 penalty units in the case of a natural person;

300 penalty units in the case of a body corporate.

505 Certain penalties prohibited

S. 505(1)
amended by
No. 67/2010
s. 160.

- (1) A person must not demand or accept from a tenant under a tenancy agreement who has failed to comply with the tenancy agreement or with any of the provisions of this Act relating to the tenancy agreement the payment by reason of the failure of any amount other than—

- (a) subject to this Act, rent under the tenancy agreement; or

(b) an amount or penalty provided for in this Act.

Penalty: 60 penalty units in the case of a natural person;

300 penalty units in the case of a body corporate.

S. 505(2)
amended by
No. 67/2010
s. 160.

(2) A rooming house owner must not demand or accept from a resident who has failed to comply with the rooming house provisions the payment by reason of that failure of any amount other than—

(a) rent in accordance with this Act; or

(b) any other payment provided for in this Act.

Penalty: 60 penalty units in the case of a natural person;

300 penalty units in the case of a body corporate.

S. 505(3)
inserted by
No. 45/2002
s. 58,
amended by
No. 67/2010
s. 160.

(3) A caravan park owner or a caravan owner must not demand or accept from a resident of a site or caravan who has failed to comply with the caravan park provisions the payment by reason of that failure of any amount other than—

(a) rent or a hiring charge in accordance with this Act; or

(b) any other payment provided for in this Act.

Penalty: 60 penalty units in the case of a natural person;

300 penalty units in the case of a body corporate.

- (4) A person must not demand or accept from a site tenant under a site agreement who has failed to comply with the site agreement or with any of the provisions of this Act relating to the site agreement the payment by reason of the failure of any amount other than—

S. 505(4)
inserted by
No. 67/2010
s. 70.

- (a) subject to this Act, rent under the site agreement; or
- (b) an amount or penalty provided for in this Act.

Penalty: 60 penalty units in the case of a natural person;
300 penalty units in the case of a body corporate.

505A Offences with respect to formal affiliation of premises with school or institution

S. 505A
inserted by
No. 19/2009
s. 19.

- (1) An owner or operator of residential premises or a person acting on behalf of that owner or operator must not represent that the residential premises has a formal affiliation with a school or institution which provides education and training if the premises does not have that affiliation.

Penalty: 300 penalty units.

- (2) An owner or operator of residential premises or a person acting on behalf of that owner or operator must not engage in conduct that is liable to mislead the public that this Act does not, because of section 21(1), apply to a tenancy agreement in respect of a rented premises, or a room, that is, or is in, the residential premises.

Penalty: 300 penalty units.

S. 505B
inserted by
No. 19/2009
s. 20.

505B Offence not to display notice about affiliation of premises with school or institution

The owner or operator of any residential premises that is formally affiliated with a school or institution which provides education and training must display prominently in a public or common area of the residential premises a notice in the prescribed form—

- (a) which has been endorsed in the prescribed manner by the school or institution (as the case may be); and
- (b) which specifies that this Act does not apply to a tenancy agreement or room in respect of the residential premises because of the formal affiliation of the residential premises with the school or institution.

Penalty: 10 penalty units.

Pt 13 Div. 1A
(Heading and
s. 505C)
inserted by
No. 38/2018
s. 308.

Division 1A—Disclosure, use and transfer of information

S. 505C
inserted by
No. 38/2018
s. 308.

505C Disclosure, use and transfer of information

- (1) This section applies to the following persons—
 - (a) an SDA provider or a person who is or has been employed or engaged by an SDA provider or who otherwise provides or has provided SDA enrolled dwellings under Part 2 or 12A;
 - (b) a person who is or has been appointed to any office under this Act or the **Disability Act 2006** or employed or engaged under this Act or the **Disability Act 2006** to perform a function under Part 2 or 12A in relation to the provision of an SDA enrolled dwelling.

- (2) A person to whom this section applies must not, directly or indirectly, disclose to any person, any information relating to the provision of SDA enrolled dwellings that is gained by or given to that person in that person's official capacity and that identifies, or is likely to lead to the identification of, the person to whom the information relates.

Penalty: 20 penalty units.

- (3) A person or body to whom information is disclosed in relation to the provision of SDA enrolled dwellings must not use or transfer that information unless—
- (a) the person or body does so for the purpose for which the information has been disclosed to the person or body; or
 - (b) the person or body is authorised by or under an Act or other law to do so.

Penalty: 20 penalty units.

- (4) Subsections (2) and (3) do not prevent the disclosure of information—
- (a) to the extent that the information is reasonably required in connection with the performance of a duty or the exercise of a power or function under this or any other Act; and
 - (b) by an SDA provider to the Director of information of a statistical nature which the SDA provider is required to provide under this Act for the purpose of enabling the Director to perform functions conferred, and meet obligations imposed, on the Director under this Act or any Commonwealth Act; and

- (c) with the consent of the person to whom the information relates or of that person's guardian or of that person's next-of-kin if that person is dead; and
- (d) to a supportive attorney under a supportive attorney appointment, within the meaning of the **Powers of Attorney Act 2014**; and
- (e) to a medical treatment decision maker within the meaning of the **Medical Treatment Planning and Decisions Act 2016**, to the extent that it is necessary to enable the medical treatment decision maker to make medical treatment decisions on behalf of the person to whom the information relates; and
- (f) to a support person within the meaning of the **Medical Treatment Planning and Decisions Act 2016** to the extent that is necessary to enable the support person to carry out the functions of a support person under that Act; and
- (g) to another person to whom subsection (2) applies, if the disclosure is reasonably required in connection with the provision by that other person of SDA enrolled dwellings under this Act to the person to whom the information relates; and
- (h) to any person to the extent that is necessary in connection with the provision of care or treatment to the person to whom the information relates if the person to whom the information relates is unable to consent to the disclosure and without the disclosure the person may, in the opinion of the discloser, suffer detriment; and
- (i) to the Secretary within the meaning of the **Disability Act 2006**; and

- (j) to the Disability Services Commissioner within the meaning of the **Disability Act 2006**; and
 - (k) to the Senior Practitioner within the meaning of the **Disability Act 2006**; and
 - (l) to the Public Advocate; and
 - (m) to a person to whom, in the opinion of the Director, it is in the public interest that the disclosure be made; and
 - (n) to the NDIA and to any prescribed person or body, and to any person or body of a prescribed class of person or body, for the purposes of the NDIS; and
 - (o) to the NDIS Quality and Safeguards Commission established under section 181A of the National Disability Insurance Scheme Act 2013 of the Commonwealth; and
 - (p) to the Commonwealth Minister administering the Aged Care Act 1997 of the Commonwealth for the purposes of providing or arranging accommodation for a person with a disability who is or was receiving specialist disability accommodation in an SDA enrolled dwelling; and
 - (q) to a prescribed body for the purposes of exercising a duty or performing a function under this or any other Act.
- (5) For the purposes of section 3(a), "any other Act" does not include the Health Privacy Principles in the **Health Records Act 2001** or Part 3 or Part 5 of that Act.

Division 2—Evidence and legal proceedings

506 Service of documents

- (1) Subject to this section, a notice or other document to be served on or given to a person under this Act must be served or given—
- (a) by delivering it personally to the person; or
 - (b) by leaving it at the person's usual or last known place of residence or business with a person apparently over the age of 16 years and apparently residing or employed at that place; or
 - (c) by sending it to the person by post addressed to the person's usual or last known place of residence or business; or
 - (d) if the person is a corporation—
 - (i) by sending it by post to the registered office in Victoria of the corporation; or
 - (ii) by giving it to a person who is an officer of the corporation who is authorised to accept service of notices and who is employed at the registered office of the corporation; or
 - (da) by electronic communication in accordance with the **Electronic Transactions (Victoria) Act 2000**; or
 - (e) in the manner ordered by the Tribunal.
- (2) In the case of a notice or other document to be served on or given to a landlord, in addition to the methods set out in subsection (1), a notice or document may be served or given—
- (a) by delivering it to the landlord or to the landlord's agent or to the person who usually collects the rent; or

S. 506(1)(da)
inserted by
No. 23/2016
s. 24(1).

- (b) by sending it by post addressed—
 - (i) to the landlord at the landlord's address for service of documents; or
 - (ii) to the landlord's agent at the agent's usual place of business; or
 - (c) by giving it to a person employed in the office of the landlord's agent.
- (2A) In the case of a notice or other document to be served on or given to a site owner, in addition to the methods set out in subsection (1), a notice or document may be served or given—
- (a) by delivering it to the site owner or to the site owner's agent or to the person who usually collects the rent; or
 - (b) by sending it by post addressed—
 - (i) to the site owner at the site owner's address for service of documents; or
 - (ii) to the site owner's agent at the agent's usual place of business; or
 - (c) by giving it to a person employed in the office of the site owner's agent.
- (3) A notice to vacate given under Part 6 must be given—
- (a) by delivering it personally to the tenant, resident or site tenant; or
 - (b) by sending the notice by registered post addressed to the tenant, resident or site tenant at the rented premises, room, site or Part 4A site; or
 - (ba) by electronic communication in accordance with the **Electronic Transactions (Victoria) Act 2000**; or

S. 506(2A)
inserted by
No. 67/2010
s. 71(1).

S. 506(3)(a)
amended by
No. 67/2010
s. 71(2)(a).

S. 506(3)(b)
amended by
No. 67/2010
s. 71(2).

S. 506(3)(ba)
inserted by
No. 23/2016
s. 24(2).

(c) in the manner ordered by the Tribunal.

Note to
s. 506(3)
inserted by
No. 45/2002
s. 98,
repealed by
No. 23/2016
s. 24(3).

* * * *

S. 506(3A)
inserted by
No. 38/2018
s. 307.

(3A) A notice given under Part 12A must be given—

- (a) by delivering it personally to the SDA resident and the SDA resident's guardian or SDA resident's administrator (if any); or
- (b) by sending the notice by ordinary post addressed to—
 - (i) the SDA resident at the SDA enrolled dwelling; and
 - (ii) the SDA resident's guardian or SDA resident's administrator (if any); or
- (c) by electronic communication in accordance with the **Electronic Transactions (Victoria) Act 2000**; or
- (d) in the manner ordered by the Tribunal.

Note to
s. 506(3A)
inserted by
No. 19/2019
s. 214.

Note

See also section 498E for further requirements in respect of notices given under Part 12A.

S. 506(4)
inserted by
No. 52/2008
s. 264,
amended by
No. 67/2010
s. 71(3).

- (4) If, under this Act, a notice or other document is to be served or given to a person who is a tenant or site tenant excluded from rented premises or Part 4A site under a family violence safety notice or a family violence intervention order, the notice or document must be served or given—
- (a) by delivering it personally to the person; or

- (b) by leaving it at the address nominated by the person under section 33 or 85 of the **Family Violence Protection Act 2008** with a person apparently over the age of 16 years and apparently residing or employed at that place; or
 - (c) by sending it to the person by post or email to the address nominated by the person under section 33 or 85 of the **Family Violence Protection Act 2008**; or
 - (d) by leaving it at the person's last known address (other than a place from which the person is excluded under the **Family Violence Protection Act 2008**) with a person apparently over the age of 16 years and apparently residing or employed at that place; or
 - (e) by sending it to the person by post or email to the person's last known postal or email address (other than to an address from which the person is excluded under the **Family Violence Protection Act 2008**); or
 - (f) in the manner ordered by the Tribunal.
- (5) If, under this Act, a notice or other document is to be served or given to a person who is a tenant excluded from rented premises under a personal safety intervention order, the notice or document must be served or given—
- (a) by delivering it personally to the person; or
 - (b) by leaving it at the address nominated by the person under section 70 of the **Personal Safety Intervention Orders Act 2010** with a person apparently over the age of 16 years and apparently residing or employed at that place; or

S. 506(5)
inserted by
No. 53/2010
s. 221(Sch.
item 9.8).

- (c) by sending it to the person by post or email to the address nominated by the person under section 70 of the **Personal Safety Intervention Orders Act 2010**; or
 - (d) by leaving it at the person's last known address (other than a place from which the person is excluded under the **Personal Safety Intervention Orders Act 2010**) with a person apparently over the age of 16 years and apparently residing or employed at that place; or
 - (e) by sending it to the person by post or email to the person's last known postal or email address (other than to an address from which the person is excluded under the **Personal Safety Intervention Orders Act 2010**); or
 - (f) in the manner ordered by the Tribunal.
- (6) If, under this Act, a notice or other document is to be served or given to a person who is a tenant or site tenant excluded from rented premises or Part 4A site under a non-local DVO that is a recognised DVO, the notice or document must be served or given—
- (a) by delivering it personally to the person; or
 - (b) by leaving it at the person's last known address (other than a place from which the person is excluded under the DVO) with a person apparently over the age of 16 years and apparently residing or employed at that place; or

S. 506(6)
inserted by
No. 53/2016
s. 123.

- (c) by sending it to the person by post or email to the person's last known postal or email address (other than to an address from which the person is excluded under the DVO); or
- (d) in the manner ordered by the Tribunal.

507 Onus of proof that Act does not apply

If, in any proceedings, a person claims that this Act, or a provision of this Act, does not apply in relation to the subject-matter of the proceedings, the onus of proving that this Act or that provision does not so apply lies on that person.

507A Application of provisions of Australian Consumer Law and Fair Trading Act 2012

- (1) Part 6.4 of the **Australian Consumer Law and Fair Trading Act 2012** (except section 153) extends and applies (with any necessary modifications) to this Act (except Part 14) as if—
 - (a) any reference in Part 6.4 of the **Australian Consumer Law and Fair Trading Act 2012** were a reference to this Act; and
 - (b) the reference in section 155(3)(a) of the **Australian Consumer Law and Fair Trading Act 2012** to "premises that is used for residential purposes" were taken to exclude a common area within the meaning of this Act in a rooming house.
- (2) Sections 125, 126, 195 and 196 and Part 8.2 (except section 213) of the **Australian Consumer Law and Fair Trading Act 2012** extend and apply (with any necessary modifications) to this Act (except Part 14) as if any reference in those provisions to the **Australian Consumer Law and Fair Trading Act 2012** were a reference to this Act (except Part 14).

S. 507A
inserted by
No. 17/1999
s. 42,
amended by
Nos 103/2004
s. 63, 17/2007
s. 36(Sch.
item 12),
2/2008
s. 60(Sch.
item 10),
67/2010 ss 84,
161, 72/2010
s. 48(Sch.
item 19),
substituted by
No. 21/2012
s. 239(Sch. 6
item 36.4).

(3) For the purposes of subsection (2)—

- (a) section 209 of the **Australian Consumer Law and Fair Trading Act 2012** applies as if a reference in that section to any section of that Act were a reference to that section as applied by subsection (1) or (2);
- (b) section 210 of the **Australian Consumer Law and Fair Trading Act 2012** applies as if a reference in that section to Part 3.1 or Part 6.3 of the **Australian Consumer Law and Fair Trading Act 2012** were a reference to this Act;
- (c) section 212 of the **Australian Consumer Law and Fair Trading Act 2012** applies as if a reference to prescribed proceedings were a reference to—
 - (i) proceedings for an offence against a provision of this Act (except Part 14 and an offence applied by subsection (1)); or
 - (ii) proceedings on an application for an injunction under section 201, 202, 203, 205 or 206 of the **Australian Consumer Law and Fair Trading Act 2012** (as applied by subsection (2)) against a person alleged to have contravened a provision of this Act (except Part 14 and an offence applied by subsection (1)); or
 - (iii) proceedings on an application for an order under section 216, or for damages under section 217, of the **Australian Consumer Law and Fair Trading Act 2012** (as applied by subsection (2)).

508 Proceedings for offences

(1) Proceedings for an offence against this Act may only be brought by—

(a) the Director; or

S. 508(1)
amended by
No. 35/2000
s. 50(c),
substituted by
No. 103/2004
s. 64.

(b) a person authorised by the Director for the purposes of this section; or

(c) a police officer.

S. 508(1)(c)
amended by
No. 37/2014
s. 10(Sch.
item 144.2).

(1A) Subsection (1) does not apply to proceedings for an indictable offence or proceedings under Part 14.

S. 508(1A)
inserted by
No. 103/2004
s. 64.

(2) In proceedings for an offence against this Act it must be presumed, in the absence of evidence to the contrary, that the person bringing the proceedings was authorised to bring the proceedings.

508A Extended period to prosecute certain offences

Despite section 7(1) of the **Criminal Procedure Act 2009**, proceedings for the following offences may be commenced within the period of 3 years after the commission of the alleged offence—

(a) an offence against section 31(1), 96 or 147;

(b) an offence against section 35(1), 97(1) or 148(1);

(c) an offence against section 37(1);

(d) an offence against section 66(1), 124 or 182;

S. 508A
inserted by
No. 45/2002
s. 99,
amended by
No. 68/2009
s. 97(Sch.
item 103).

- (e) an offence against section 146(3);
- (f) an offence against section 183(1);
- (g) an offence against section 405(1) or (4);
- (h) an offence against section 406.

509 Jurisdiction of Supreme Court, County Court and Magistrates' Court

- (1) The Supreme Court has jurisdiction to hear and determine applications made under section 510.
- (2) Subject to section 37 of the **County Court Act 1958**, the County Court has jurisdiction to hear and determine applications made under section 510.
- (3) Subject to the **Magistrates' Court Act 1989**, the Magistrates' Court has jurisdiction to hear and determine applications made under section 510.

510 Application to Supreme Court, County Court or Magistrates' Court

- (1) A person may make an application under this section to a court referred to in section 509 in relation to any matter arising in relation to—
 - (a) a tenancy agreement of premises situated in Victoria; or
 - (b) a right or duty created under this Act in relation to a rooming house; or
 - (c) a right or duty created under this Act in relation to a caravan park; or
 - (d) a site agreement in respect of a Part 4A site—

S. 510(1)(c)
amended by
No. 67/2010
s. 72(a).

S. 510(1)(d)
inserted by
No. 67/2010
s. 72(b).

being an application that, if made to the Tribunal, the Tribunal would, but for section 447, have been entitled to hear and determine.

- (2) In addition to its existing powers, the court to which application is made under this section has, in hearing and determining the application, the same powers as the Tribunal would have had if the application had been heard and determined by it.
- (3) Nothing in section 447 limits the power of a court to hear and determine an application under this section.
- (4) If a person makes an application to the Supreme Court, being an application that, if made to the Tribunal, the Tribunal would have been entitled to hear and determine, the person is not entitled to any costs in the proceedings unless the Supreme Court is satisfied that, at the time of making the application, there were reasonable grounds for believing that the Tribunal would not have been entitled to hear and determine the application.

510A Parties to Tribunal proceedings

In addition to any other parties, the following are parties to a proceeding in the Tribunal under this Act—

- (a) a person in relation to whom the application in the proceeding is made;
- (b) a person whose alleged act or omission forms the basis of the application in the proceeding;
- (c) a person against whom an order is sought in the proceeding.

**S. 510A
inserted by
No. 52/1998
s. 241.**

Division 2A—Infringement notices

Pt 13 Div. 2A
(Heading and
ss 510B–
510J)
inserted by
No. 103/2004
s. 65.

510B Definitions

S. 510B
inserted by
No. 103/2004
s. 65.

In this Division—

S. 510B def. of
*authorised
officer*
amended by
Nos 37/2014
s. 10(Sch.
item 144.3),
23/2016
s. 25(2).

authorised officer means—

- (a) an inspector appointed under the
**Australian Consumer Law and Fair
Trading Act 2012**;
- (b) a police officer;
- (c) a person authorised in writing by the
Director.

510C Power to serve a notice

S. 510C
inserted by
No. 103/2004
s. 65,
amended by
No. 63/2010
s. 64(1).

- (1) An authorised officer may serve an infringement notice on any person that he or she has reason to believe has committed an offence against a provision of this Act or the regulations that is prescribed for the purposes of this subsection.
- (2) An offence referred to in subsection (1) for which an infringement notice may be served is an infringement offence within the meaning of the **Infringements Act 2006** and the penalty for that offence is the prescribed infringement penalty in respect of that offence.

S. 510C(2)
substituted by
No. 32/2006
s. 94(Sch.
item 42(1)).

S. 510D
inserted by
No. 103/2004
s. 65,
substituted by
No. 32/2006
s. 94(Sch.
item 42(2)),
repealed by
No. 63/2010
s. 64(2).

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Ss 510E–510J
inserted by
No. 103/2004
s. 65,
repealed by
No. 32/2006
s. 94(Sch.
item 42(3)).

Division 3—Regulations

511 Regulations

(1) The Governor in Council may make regulations for or with respect to—

(a) criteria to be considered by a school or institution which provides education and training before entering a written agreement referred to in section 21(2);

S. 511(1)(a)
repealed by
No. 52/1998
s. 242(a)(i),
new
s. 511(1)(a)
inserted by
No. 19/2009
s. 21.
S. 511(1)(b)
repealed by
No. 52/1998
s. 242(a)(i),
new
s. 511(1)(b)
inserted by
No. 19/2009
s. 21.

(b) the form of a notice required to be displayed under section 505B;

(c) endorsements by schools or institutions which provide education and training of notices required to be displayed under section 505B;

S. 511(1)(c)
repealed by
No. 52/1998
s. 242(a)(i),
new
s. 511(1)(c)
inserted by
No. 19/2009
s. 21.

(d) the manner of lodgment of documents with the Authority or the Director (including electronic lodgment and lodgment by facsimile);

S. 511(1)(d)
amended by
No. 52/1998
s. 242(a)(ii).

Residential Tenancies Act 1997
No. 109 of 1997
Part 13—General

S. 511(1)(e) repealed by No. 52/1998 s. 242(a)(iii).	*	*	*	*	*
S. 511(1)(f) amended by No. 40/2018 s. 12(1).	(f)	prescribing a standard form of tenancy agreement for a fixed term not exceeding 5 years;			
S. 511(1)(faa) inserted by No. 40/2018 s. 12(2).	(faa)	prescribing standard form tenancy agreements for tenancy agreements, or classes of tenancy agreements, for a fixed term of more than 5 years, including but not limited to the following—			
	(i)	prescribing terms which may be inconsistent with, or vary the requirements of, Part 2 (other than Division 2 of that Part);			
	(ii)	prescribing, in relation to tenancy agreements for a fixed term of more than 5 years, alternative terms which may be included in the standard form tenancy agreement or other form of tenancy agreement, or classes of tenancy agreement;			
S. 511(1)(faab) inserted by No. 40/2018 s. 12(2).	(faab)	prescribing prohibited terms for tenancy agreements, or classes of tenancy agreements, for a fixed term of more than 5 years;			
S. 511(1)(fa) inserted by No. 67/2010 s. 73.	(fa)	prescribing the form and content of a written statement required under section 206ZR;			
S. 511(1)(fb) inserted by No. 67/2010 s. 73.	(fb)	prescribing the form and content of a site agreement or class of site agreement required under section 206F;			
S. 511(1)(fc) inserted by No. 67/2010 s. 73.	(fc)	the minimum term that must be offered by a site owner or a class of site owners;			

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|---|--|
| (fd) the rents, fees and charges that may be imposed under a site agreement; | S. 511(1)(fd) inserted by No. 67/2010 s. 73. |
| (fe) the manner in which rents, fees and charges may be calculated and adjusted under a site agreement; | S. 511(1)(fe) inserted by No. 67/2010 s. 73. |
| (ff) prescribing the matters to be included in Part 4A park rules; | S. 511(1)(ff) inserted by No. 67/2010 s. 73. |
| (g) prescribing forms and information to be used for the purposes of this Act; | |
| (ga) prescribing particulars to be included in, and other matters in relation to, the Rooming House Register; | S. 511(1)(ga) inserted by No. 56/2012 s. 18. |
| (h) prescribing penalties not exceeding 20 penalty units for a breach of the regulations; | S. 511(1)(h) amended by No. 67/2010 s. 162. |
| (ha) prescribing a standard form of SDA residency agreement; | S. 511(1)(ha) inserted by No. 38/2018 s. 309 (as amended by No. 19/2019 s. 235). |
| (hb) prescribing a person or body to which a matter relating to an SDA enrolled dwelling may be referred; | S. 511(1)(hb) inserted by No. 38/2018 s. 309 (as amended by No. 19/2019 s. 235). |
| (hc) prescribing a person or body for the purposes of section 505C(4); | S. 511(1)(hc) inserted by No. 38/2018 s. 309 (as amended by No. 19/2019 s. 235). |
| (i) generally prescribing any matter or thing required or authorised to be prescribed by this Act. | |

Residential Tenancies Act 1997
No. 109 of 1997
Part 13—General

S. 511(2)
repealed by
No. 52/1998
s. 242(b).

* * * * *

(3) Regulations under this Act (except under Part 14)
may—

- (a) be of general or limited application;
- (b) differ according to differences in time, place
or circumstance;

S. 511(3)(ba)
inserted by
No. 67/2010
s. 170 (as
amended by
No. 36/2011
s. 38(3)).

(ba) apply at all times or specified times;

S. 511(3)(bb)
inserted by
No. 67/2010
s. 170 (as
amended by
No. 36/2011
s. 38(3)).

(bb) require matters in the regulations to be—

- (i) in accordance with specified standards
or specified requirements; or
- (ii) approved by, or to the satisfaction of, a
specified person or body or specified
classes of person or body; or
- (iii) as specified in both subparagraphs (i)
and (ii);

S. 511(3)(bc)
inserted by
No. 67/2010
s. 170 (as
amended by
No. 36/2011
s. 38(3)).

(bc) apply, adopt or incorporate any matter
contained in any document or any method,
whether—

- (i) wholly or partially or as amended by
the regulations; or
- (ii) as formulated or published on or before
the date when the regulations are made;
or
- (iii) as formulated or published from time to
time;

- | | |
|--|--|
| (bd) confer a discretionary authority or impose a duty on a specified person or body or specified classes of person or body; | S. 511(3)(bd) inserted by No. 67/2010 s. 170 (as amended by No. 36/2011 s. 38(3)). |
| (be) provide for the exemption of a person or thing or classes of person or thing from any of the regulations, whether—
(i) unconditionally or on specified conditions; and
(ii) either wholly or to such an extent as is specified; | S. 511(3)(be) inserted by No. 67/2010 s. 170 (as amended by No. 36/2011 s. 38(3)). |
| (c) leave any matter or thing to be from time to time determined or approved by the Director or the Authority. | S. 511(3)(c) amended by No. 52/1998 s. 242(c). |

Part 14—Regulation of caravan parks and movable dwellings

Division 1—Application

512 Application of this Part

This Part does not apply to—

- (a) a caravan park that operates for a limited period to house seasonal agricultural workers or workers engaged in short-term construction jobs; or
- (b) a caravan park that operates for a limited period in conjunction with a festival or other similar event; or
- (c) a caravan park exempted by the Minister under section 513.

513 Minister may exempt caravan park from compliance with this Part

The Minister may—

- (a) exempt a caravan park from compliance with this Part; and
- (b) revoke that exemption.

Division 2—Regulation of caravan parks and movable dwellings

514 Standards regulations

The Governor in Council may make regulations for or with respect to all or any of the following matters—

- (a) standards of development in relation to land used or developed or intended to be used or developed for the placement of movable dwellings;

- (b) standards for facilities and services in caravan parks;
- (c) standards of design, construction, installation and maintenance of movable dwellings;
- (d) necessary and optional features, apparatus or accessories for movable dwellings;
- (e) health and safety standards for caravan parks with which both occupiers and owners must comply;
- (f) any other matters relating to the regulation of standards in respect of movable dwellings and caravan parks that are necessary to give effect to this Part.

515 Registration regulations

The Governor in Council may make regulations for or with respect to all or any of the following matters—

- (a) the registration of caravan parks and prescribing terms and conditions to which registration is subject;
- (b) the grounds on which registration may be granted or issued, transferred or renewed;
- (c) appropriate forms for applications for registration, transfer or renewal of registration;
- (d) information to be provided in applications for registration, transfer or renewal of registration;
- (e) fees for registration, transfer or renewal of registration of caravan parks including—
 - (i) specific fees;
 - (ii) maximum or minimum fees;
 - (iii) maximum and minimum fees;

- (iv) scales of fees proportionate with the period of registration;
- (v) the payment of fees either generally or under specified conditions or in specified circumstances;
- (f) any other matters relating to the registration of caravan parks that are necessary to give effect to this Part.

S. 515A
inserted by
No. 67/2010
s. 85.

515A Fire safety and emergency management regulations

The Governor in Council may make regulations for or with respect to all or any of the following matters—

- (a) the preparation of emergency management plans for caravan parks;
- (b) the form, content and display of emergency management plans of caravan parks, including emergency procedures and preventative measures;
- (c) the display of public emergency warnings in caravan parks;
- (d) the supply and maintenance of fire safety equipment in caravan parks;
- (e) standards for maintaining clear areas within caravan parks for the purposes of fire fighter access and fire separation;
- (f) fees for carrying out inspections and preparing reports in respect of the fire safety and emergency management plans of caravan parks including—
 - (i) specific fees;
 - (ii) maximum or minimum fees;
 - (iii) maximum and minimum fees;

- (iv) scales of fees proportionate with the period of registration;
- (v) the payment of fees either generally or under specified conditions or in specified circumstances;
- (g) any other matters relating to the regulation of fire safety and emergency management plans in respect of movable dwellings and caravan parks that are necessary to give effect to this Part.

516 Additional powers

Regulations under this Part may—

- (a) provide exemptions from the regulations for a class or type of person, caravan park, movable dwelling or works;
- (b) prescribe a penalty not exceeding 20 penalty units for a contravention of any regulation;
- (c) apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any authority or body whether—
 - (i) wholly or partially or as amended by the regulations; or
 - (ii) as formulated, issued, prescribed or published from time to time or at the time the regulations are made or at any time before then;
- (d) be of a general or limited application;
- (e) differ according to differences in time, place or circumstance;

S. 516(b)
amended by
No. 67/2010
s. 163.

S. 516(f)
amended by
Nos 23/2016
s. 26(2),
38/2017
s. 91(1).

(f) leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by the Minister or any government department, Council or public authority or any officer of that department, Council or authority.

Division 3—Application of building and planning laws

S. 517
amended by
No. 28/2000
s. 22.

517 Building provisions

The **Building Act 1993**, except Part 12A, does not apply to movable dwellings situated in a caravan park but does apply to buildings situated in a caravan park that are not movable dwellings.

518 Planning provisions

A planning scheme or permit under the **Planning and Environment Act 1987** whether made before or after the commencement of this section cannot limit the duration of residency in a caravan park.

Pt 14 Div. 3A
(Heading and
ss 518A–
518F)
inserted by
No. 67/2010
s. 86.

Division 3A—Fire safety and emergency management procedures

S. 518A
inserted by
No. 67/2010
s. 86.

518A Definitions

In this Division—

emergency management plan means an emergency management plan prepared under section 518D;

emergency procedures means the emergency procedures contained in an emergency management plan;

preventative measures means the preventative measures contained in an emergency management plan;

public emergency warning means an emergency warning issued to the general public by an emergency services agency for an emergency, including a flood, bushfire, storm or tsunami.

518B Provision of fire fighting equipment

S. 518B
inserted by
No. 67/2010
s. 86.

- (1) A caravan park owner must provide fire fighting equipment for the caravan park in accordance with the regulations.

Penalty: 240 penalty units in the case of a natural person;
1200 penalty units in the case of a body corporate.

- (2) A caravan park owner must ensure that the fire fighting equipment is maintained to the prescribed standard.

Penalty: 240 penalty units in the case of a natural person;
1200 penalty units in the case of a body corporate.

518C Space around movable dwellings and adjacent structures

S. 518C
inserted by
No. 67/2010
s. 85.

A caravan park owner must ensure that the area of space around movable dwellings and adjacent structures complies with the prescribed standards for providing fire fighter access and fire separation.

Penalty: 240 penalty units in the case of a natural person;
1200 penalty units in the case of a body corporate.

S. 518D
inserted by
No. 67/2010
s. 86.

518D Emergency management plan and emergency procedures

- (1) A caravan park owner must not operate the caravan park unless the caravan park owner has prepared an emergency management plan in accordance with the regulations.

Penalty: 240 penalty units in the case of a natural person;
1200 penalty units in the case of a body corporate.

- (2) A caravan park owner must display a copy of the emergency procedures for the caravan park in the prescribed manner.

Penalty: 240 penalty units in the case of a natural person;
1200 penalty units in the case of a body corporate.

- (3) A caravan park owner must implement the preventative measures for the caravan park.

Penalty: 240 penalty units in the case of a natural person;
1200 penalty units in the case of a body corporate.

- (4) In the event of an emergency, a caravan park owner must implement the relevant emergency procedures for the caravan park.

Penalty: 240 penalty units in the case of a natural person;
1200 penalty units in the case of a body corporate.

518E Public emergency warnings

S. 518E
inserted by
No. 67/2010
s. 86.

- (1) If a public emergency warning is issued, a caravan park owner must display a copy of the public emergency warning in the prescribed manner.

Penalty: 240 penalty units in the case of a natural person;
1200 penalty units in the case of a body corporate.

- (2) If a public emergency warning is issued, a caravan park owner must implement the relevant emergency procedures for the caravan park.

Penalty: 240 penalty units in the case of a natural person;
1200 penalty units in the case of a body corporate.

518F Council may issue notice

S. 518F
(Heading)
amended by
No. 23/2016
s. 26(3).

S. 518F
inserted by
No. 67/2010
s. 86.

- (1) If a Council determines that the emergency management plan of a caravan park does not comply with the prescribed requirements, the Council may issue a written notice to the caravan park owner specifying—

S. 518F(1)
amended by
No. 23/2016
s. 26(4).

- (a) the changes to the emergency management plan required in order to comply with the prescribed requirements; and
(b) a time for compliance with the notice, being not less than 14 days from the date of the notice.

- (2) A caravan park owner who is issued with a notice under subsection (1) must update the emergency management plan in accordance with that notice within the time period specified in the notice.

Penalty: 240 penalty units in the case of a natural person;
1200 penalty units in the case of a body corporate.

Division 4—Applications and appeals

519 Application by caravan park owner for exemption

- (1) A caravan park owner may apply to the Building Appeals Board for an exemption from, or a variation of, a regulation under this Part applying to the owner and the caravan park.
- (2) Subsection (1) applies regardless of when the caravan park commenced operating.
- (3) If the Building Appeals Board is satisfied that in the particular circumstances the regulation is inappropriate or might reasonably be varied without detriment to the public interest, the Board may grant the exemption or determine that the regulation applies with any variations it thinks fit.
- (4) An exemption or variation ceases to apply to part of a caravan park on that part being substantially extended or re-developed.

S. 520
amended by
No. 23/2016
s. 26(5).

520 Referral of disputes by caravan park owners

If any doubt, difference or dissatisfaction in respect of any matter provided for in this Part or in the regulations under this Part arises between a Council and a caravan park owner, the caravan park owner may apply to have the matter determined by the Building Appeals Board.

521 Appeals

A caravan owner or resident may appeal to the Building Appeals Board against a decision of a Council in relation to—

- (a) the application of the regulations under this Part to caravan park owners, caravan owners, residents and occupiers; or
- (b) the application of an exemption from the regulations under this Part of caravan park owners, caravan owners, residents and occupiers.

S. 521
amended by
No. 23/2016
s. 26(5).

Division 5—Enforcement

522 Compliance notice

- (1) The Minister or a Council may give a compliance notice to a person who in the opinion of the Minister or Council has contravened this Part or a regulation under this Part.
- (2) A compliance notice must require the person to whom it is given to rectify the matter within the time specified in the compliance notice.
- (3) A person must comply with a compliance notice.
Penalty: 120 penalty units.

S. 522(1)
amended by
Nos 23/2016
s. 26(5),
38/2017
s. 91(2).

S. 522(3)
amended by
No. 67/2010
s. 164.

523 Closure order

- (1) The Minister may make a closure order under this section if the Minister is satisfied that a caravan park owner has—
 - (a) committed an offence against this Act or the regulations under this Act which is a continuing offence or is in the Minister's opinion of a serious nature; or

S. 523(1)(b)
substituted by
No. 52/1998
s. 242(d).

(b) failed to comply with an order of the Tribunal.

S. 523(2)
amended by
No. 52/1998
s. 242(e).

(2) A closure order may direct that until this Act or the regulation or the order of the Tribunal is complied with—

(a) the caravan park is to be closed; and

(b) the caravan park owner must not—

(i) admit new occupiers to the park; or

(ii) collect rents or hiring charges from existing residents or similar fees from other existing occupiers.

S. 523(3)
amended by
No. 67/2010
s. 165.

(3) A caravan park owner must comply with a closure order.

Penalty: 120 penalty units.

524 Delegations

(1) The Minister may, by instrument, delegate to any person any of his or her powers, duties or functions under this Part, except this power of delegation.

S. 524(2)
amended by
Nos 23/2016
s. 26(5),
38/2017
s. 91(3).

(2) A Council may, by instrument, delegate to an officer of, or the holder of an office in, the Council any of its powers, duties or functions under this Part and the regulations under this Part, except this power of delegation.

525 Authorised persons

S. 525(1)
amended by
Nos 46/1998
s. 7(Sch. 1),
67/2010
s. 87(1).

(1) The Secretary to the Department of Planning and Community Development may authorise any employee in the public service to exercise the powers set out in section 526, either generally or in a particular case.

- | | |
|--|---|
| (2) A Council may authorise any of its officers to exercise the powers set out in section 526, either generally or in a particular case. | S. 525(2)
amended by
No. 23/2016
s. 26(5). |
| (2A) The Chief Officer within the meaning of the Country Fire Authority Act 1958 may, either generally or in a particular case—
<div style="margin-left: 20px;">(a) exercise the powers set out in section 526;
(b) authorise any officer or employee of the Country Fire Authority to exercise the powers set out in section 526.</div> | S. 525(2A)
inserted by
No. 67/2010
s. 87(2). |
| (2B) The Chief Officer within the meaning of the Metropolitan Fire Brigades Act 1958 may, either generally or in a particular case—
<div style="margin-left: 20px;">(a) exercise the powers set out in section 526;
(b) authorise any officer or employee of the Metropolitan Fire and Emergency Services to exercise the powers set out in section 526.</div> | S. 525(2B)
inserted by
No. 67/2010
s. 87(2). |
| (3) The Secretary to the Department of Planning and Community Development must issue an identity card to each person authorised by the Secretary under this section. | S. 525(3)
amended by
No. 67/2010
s. 87(3). |
| (4) A Council must issue an identity card to each person authorised by the Council under this section. | S. 525(4)
amended by
No. 23/2016
s. 26(6). |
| (4A) The Chief Officer within the meaning of the Country Fire Authority Act 1958 must issue an identity card to each person authorised under subsection (2A). | S. 525(4A)
inserted by
No. 67/2010
s. 87(4). |
| (4B) The Chief Officer within the meaning of the Metropolitan Fire Brigades Act 1958 must issue an identity card to each person authorised under subsection (2B). | S. 525(4B)
inserted by
No. 67/2010
s. 87(4). |

(5) An identity card must—

- (a) contain a photograph of the authorised person; and
- (b) contain the signature of the authorised person; and
- (c) if the identity card is issued by the Secretary, be signed by the Secretary; and
- (d) if the identity card is issued by a Council, be signed by a member of staff of the Council appointed for the purpose; and

S. 525(5)(d)
amended by
Nos 67/2010
s. 87(5)(a),
23/2016
s. 26(6).

- (e) if the identity card is issued by the Chief Officer within the meaning of the **Country Fire Authority Act 1958**, be signed by the Chief Officer; and

S. 525(5)(e)
inserted by
No. 67/2010
s. 87(5)(b).

- (f) if the identity card is issued by the Chief Officer within the meaning of the **Metropolitan Fire Brigades Act 1958**, be signed by the Chief Officer.

S. 525(5)(f)
inserted by
No. 67/2010
s. 87(5)(b).

(6) An authorised person must—

- (a) carry an identity card whenever the authorised person is exercising his or her powers under section 526; and
- (b) show the identity card on being requested to do so.

Penalty: 1 penalty unit.

526 Powers of entry and inspection

- (1) An authorised person may enter any building or land at any reasonable time for the purpose of making any inspection or test to determine whether or not this Part and the regulations under this Part are being complied with.

- (2) An authorised person may not, under this section, enter a residence unless the occupier of the residence has consented in writing to the entry.
- (3) An authorised person may not, under this section, enter any other building or land—
 - (a) unless the occupier of the building or land has consented in writing to the entry; or
 - (b) in the absence of that consent, unless 2 days clear notice is given to the occupier (if any).
- (4) If an authorised person exercises a power of entry under this section without the owner or occupier being present, the authorised person must, on leaving the building or land, leave a notice setting out—
 - (a) the time of entry; and
 - (b) the purpose of entry; and
 - (c) a description of all things done while on the land or in the building; and
 - (d) the time of departure; and
 - (e) the procedure for contacting the authorised person for further details of the entry.
- (5) If an authorised person exercises a power of entry under this section, the Secretary to the Department of Planning and Community Development or Council (as the case requires) must keep a record of that entry.

S. 526(5)
amended by
Nos 67/2010
s. 88, 23/2016
s. 26(7).

526A Report of inspection

S. 526A
inserted by
No. 67/2010
s. 89.

- (1) A person who is authorised under section 525(2A) or (2B), and who exercises a power of entry and inspection under section 526, must prepare a report of inspection.

S. 526A(3)(b)
amended by
No. 23/2016
s. 26(7).

- (2) A report under subsection (1) must assess whether the caravan park owner has complied with—
 - (a) Division 3A; or
 - (b) any regulations made under Division 3A.
- (3) A report under this section must be provided within 10 days from the day of the inspection to—
 - (a) the caravan park owner to whom the report relates; and
 - (b) the Council in whose area the caravan park is situated.

527 Proceedings for offences against this Part or the regulations

S. 527(1)
amended by
No. 23/2016
s. 26(7).

- (1) The Minister or a Council may authorise a person either generally or in a particular case to institute proceedings for offences against this Part or the regulations under this Part.
- (2) In proceedings for offences against this Part or the regulations under this Part, proof is not required until evidence is given to the contrary of—
 - (a) the authority of a person to institute the proceedings;
 - (b) the issue, transfer or renewal of a caravan park registration;
 - (c) the giving or making of any order, notice, decision or direction.

Part 15—Transitional provisions

Pt 15
(Heading)
substituted by
No. 63/2005
s. 30.

528 Definition of 2005 Act

S. 528
substituted by
No. 63/2005
s. 31.

In this Part *2005 Act* means the **Residential Tenancies (Further Amendment) Act 2005**.

529 Number of occupants of room frozen at Royal Assent

S. 529
substituted by
No. 63/2005
s. 31.

If a room in a rooming house is occupied by one or more residents at the date of commencement of section 31 of the 2005 Act, the rooming house owner must not, before the date of commencement of section 9 of the 2005 Act, increase the number of persons who occupy the room.

Penalty: 10 penalty units.

530 Rights of existing residents

S. 530
substituted by
No. 63/2005
s. 31.

- (1) If a room in a rooming house has more than one resident at the date of commencement of section 31 of the 2005 Act—
 - (a) each of those residents is deemed to have a shared room right in respect of that room; and
 - (b) a resident (the *new resident*) who, before the date of commencement of section 9 of the 2005 Act, takes the place of a resident in that room is deemed to have a shared room right in respect of that room if there is an existing resident with a shared room right occupying that room when the new resident takes up occupation.

Example

J and K share a room in a rooming house at the date of commencement of section 31 of the 2005 Act. The rooming house owner had chosen separately each person who was to occupy the room. J and K each have a shared room right. If K moves out and L takes up occupancy of the room before the date of commencement of section 9 of the 2005 Act, J and L each have a shared room right.

- (2) Subsection (1) does not apply to 2 or more residents who have exclusive occupancy of a room in a rooming house at the date of commencement of section 31 of the 2005 Act.

Example

L and M are domestic partners. They are the sole occupants of the room at the date of commencement of section 31 of the 2005 Act. They had agreed with the rooming house owner before that date that they should have exclusive occupancy of the room. L and M each have an exclusive occupancy right.

- (3) Except as provided by subsection (1), a resident of a rooming house on the date of commencement of section 31 of the 2005 Act is deemed to have an exclusive occupancy right in respect of that room.

S. 531
substituted by
No. 63/2005
s. 31.

531 Notice to existing residents

- (1) A rooming house owner must within 14 days after the date of commencement of section 9 of the 2005 Act give to each resident of the rooming house who under section 530 is deemed to have a shared room right a notice in accordance with subsection (2).

Penalty: 5 penalty units.

- (2) The notice must—
- (a) be in writing in a form approved by the Director; and
 - (b) state the date on which it is given; and
 - (c) state that it is given in accordance with this section; and

- (d) specify that the residency right of the resident is a shared room right; and
 - (e) specify the total number of people who, in accordance with section 529, could be accommodated in the room at the date of commencement of section 9 of the 2005 Act; and
 - (f) state that the room capacity of the room set out in paragraph (e) cannot be increased without the consent of the resident in accordance with section 94D of the Act; and
 - (g) state that if there is any vacancy in the room capacity set out in paragraph (e)—
 - (i) the resident will not be notified before another resident takes up occupancy of the room; and
 - (ii) the rooming house owner will choose the other residents who will be permitted to take up occupancy of the room; and
 - (h) specify the rent payable by the resident for the shared room right and the rent that would have been payable by the resident if the right had been an exclusive occupancy right.
- (3) A rooming house owner is not required to give a notice to a resident under this section if the rooming house owner gives a notice under section 94B to the resident within 14 days after the date of commencement of section 9 of the 2005 Act.

532 Transitional provisions

Schedule 1 has effect.

S. 533
repealed by
No. 103/2004
s. 66,
new s. 533
inserted by
No. 47/2019
s. 49.

**533 Transitional provision—Consumer Legislation
Amendment Act 2019—pets**

Division 5B of Part 2 as inserted by the
Consumer Legislation Amendment Act 2019
does not apply to a tenancy agreement in
existence before the commencement of that
Division, unless the tenant, on or after that
commencement, introduces or wishes to keep a
pet at the rented premises.

Schedules

Schedule 1—Transitional provisions

Sch. 1
amended by
No. 45/2002
s. 100.

Division 1—General transitional provisions

1 General transitional provisions

- (1) Unless the contrary intention appears in this Act, all persons, things and circumstances appointed or created by or under the **Residential Tenancies Act 1980**, the **Rooming Houses Act 1990** or the **Caravan Parks and Movable Dwellings Act 1988**, or existing or continuing under any of those Acts immediately before the commencement of this clause continue, under and subject to this Act, to have the same status, operation and effect as they respectively would have had if this Act had not been enacted.
- (2) This Schedule does not affect or take away from the **Interpretation of Legislation Act 1984**.
- (3) This Schedule applies despite anything to the contrary in any other provision of this Act.

2 Superseded references

On the commencement of this clause, in any Act (other than this Act) or in any instrument made under any Act or in any document of any kind—

- (a) a reference to the **Residential Tenancies Act 1980** is deemed to be a reference to the **Residential Tenancies Act 1997**; and
- (b) a reference to the **Rooming Houses Act 1990** is deemed to be a reference to the **Residential Tenancies Act 1997**; and

- (c) a reference to the **Caravan Parks and Movable Dwellings Act 1988** is deemed to be a reference to the **Residential Tenancies Act 1997**.

3 Residential Tenancies Tribunal

The Residential Tenancies Tribunal established under this Act deemed to be the same body as the Residential Tenancies Tribunal established under the **Residential Tenancies Act 1980**.

4 Registrar

The person who held the position of Registrar of the Residential Tenancies Tribunal immediately before the commencement of this clause is deemed on that commencement to be appointed as the Registrar of the Residential Tenancies Tribunal under this Act.

5 Residential Tenancies Fund

Subject to clause 6, the Residential Tenancies Fund established under this Act is deemed to be the same fund as the Residential Tenancies Fund established under the **Residential Tenancies Act 1980**.

6 Rent Special Account

On the commencement of this clause—

- (a) all money standing to the credit of the Rent Special Account under the **Residential Tenancies Act 1980** shall form part of and be paid into the Rent Special Account established under this Act; and
- (b) the Rent Special Account established under this Act is deemed to be the same account as the Rent Special Account under the **Residential Tenancies Act 1980**.

7 Breach of duty notice

- (1) A notice given under section 105 of the **Residential Tenancies Act 1980** in respect of a breach of a provision of Division 2 or 3 of Part IV of that Act is deemed to be a breach of duty notice given under Part 5 of this Act in respect of a breach of a corresponding provision of this Act.
- (2) A notice given under section 120 of the **Residential Tenancies Act 1980** in respect of a breach of a provision of Division 2, 3 or 4 of Part IV of that Act is deemed to be a breach of duty notice given under Part 5 of this Act in respect of a breach of a corresponding provision of this Act.
- (3) A breach of duty notice given under section 40 of the **Rooming Houses Act 1990** in respect of a breach of a duty under Division 1 of Part 3 of that Act is deemed to be a breach of duty notice given under Part 5 of this Act in respect of a breach of a corresponding duty under this Act.
- (4) A breach of duty notice given under section 47 of the **Caravan Parks and Movable Dwellings Act 1988** in respect of a breach of a duty under Division 1 of Part 3 of that Act is deemed to be a breach of duty notice given under Part 5 of this Act in respect of a breach of a corresponding duty under this Act.

Division 2—Bonds

8 Bonds

- (1) Sections 65, 66, 67, 68, 69, 77, 78 and 79 of the **Residential Tenancies Act 1980** as in force immediately before the commencement of this clause continue to apply in relation to a security deposit paid under a tenancy agreement under that Act before that commencement until the amount

of the security deposit is lodged with the Authority under this section.

- (2) Sections 14(5) and 15 of the **Rooming Houses Act 1990** as in force immediately before the commencement of this clause continue to apply in relation to a bond paid under that Act before that commencement until the amount of the bond is lodged with the Authority under this section.
- (3) Sections 14(5) and 15 of the **Caravan Parks and Movable Dwellings Act 1988** as in force immediately before the commencement of this clause continue to apply in relation to a bond paid under that Act before that commencement until the amount of the bond is lodged with the Authority under this section.
- (4) Part 10 of this Act does not apply to a security deposit or bond to which a provision of the **Residential Tenancies Act 1980**, the **Rooming Houses Act 1990** or the **Caravan Parks and Movable Dwellings Act 1988** continues to apply under this clause.
- (5) A landlord must before the compliance day give to the Authority the amount of any security deposit or bond held by the landlord immediately before the relevant day.
Penalty: 10 penalty units.
- (6) An amount of security deposit or bond must be lodged together with a completed bond lodgment form.
- (7) An amount lodged with the Authority under this clause is deemed to be a bond for the purposes of this Act and on that lodgment—
 - (a) this Act applies in respect of that bond; and

- (b) the **Residential Tenancies Act 1980**, **Rooming Houses Act 1990** or **Caravan Parks and Movable Dwellings Act 1988**, as the case requires, ceases to apply to that bond.
- (8) Subclause (5) does not apply to an amount of security deposit or bond—
- (a) that is paid to a tenant or resident or the Director of Housing or an agent of the Director of Housing or to which the landlord becomes entitled before the compliance day; or
 - (b) in respect of which a claim for compensation has been made to the Residential Tenancies Tribunal but is not determined before the compliance day.
- (9) In this clause—
- compliance day*** means the day that is 6 months after the relevant day;
- landlord*** means—
- (a) a landlord within the meaning of the **Residential Tenancies Act 1980**; or
 - (b) a rooming house owner within the meaning of the **Rooming Houses Act 1990**; or
 - (c) a caravan park owner or caravan owner within the meaning of the **Caravan Parks and Movable Dwellings Act 1988**;
- relevant day*** means the day on which Part 10 of this Act comes into operation.

Division 3—Transitional and savings provisions— Residential Tenancies (Amendment) Act 2002

9 Section 16 tenancy agreements

Despite the repeal of section 16 by the **Residential Tenancies (Amendment) Act 2002**, a tenancy agreement created under section 16 as in force immediately before its repeal is not affected and the rooming house provisions do not apply to that agreement.

10 Applications for non-urgent repairs

Section 75(2) as amended by the **Residential Tenancies (Amendment) Act 2002** applies to an application in relation to a Director's report received before the commencement of section 17 of that Act if the period under section 75(2) (as in force immediately before its amendment) for making the application has not expired before that commencement.

11 Warrants of possession

Despite the amendment of section 355(1) by the **Residential Tenancies (Amendment) Act 2002**, a warrant of possession in the form approved by the Minister is sufficient for the purposes of Part 7 if the warrant—

- (a) was issued before the commencement of section 90 of that Act; and
- (b) before that commencement has not—
 - (i) lapsed or been cancelled; or
 - (ii) been executed.

Division 4—Australian Consumer Law and Fair Trading Act 2012

Sch. 1 Div. 4
(Heading and
cls 12–14)
inserted by
No. 21/2012
s. 239(Sch. 6
item 36.5).

12 Commencement day

Sch. 1 cl. 12
inserted by
No. 21/2012
s. 239(Sch. 6
item 36.5).

In this Division, *commencement day* means the day on which section 236 of the **Australian Consumer Law and Fair Trading Act 2012** comes into operation.

13 Saving for protected tenants

Sch. 1 cl. 13
inserted by
No. 21/2012
s. 239(Sch. 6
item 36.5).

Part V of the **Landlord and Tenant Act 1958** continues to apply to a lease of premises to which that Part applied immediately before the commencement day for so long as those premises remain prescribed premises.

14 Part V leases of prescribed premises to be transitioned to Residential Tenancies Act 1997 except in certain circumstances

Sch. 1 cl. 14
inserted by
No. 21/2012
s. 239(Sch. 6
item 36.5).

- (1) If a lessee in possession of premises to which Part V of the **Landlord and Tenant Act 1958** applies dies on or after the commencement day, only the partner of the lessee who is residing with the lessee at the time of that death may take over the protected tenancy pursuant to section 106 of that Act.
- (2) Despite section 14(3) and except in the circumstances described in subclause (1), Part V of the **Landlord and Tenant Act 1958** will cease to apply on and from the date of death of a lessee who was in possession of premises under a lease to which that Part applied.

Sch. 1 Div. 5
(Heading and
cls 15–20)
inserted by
No. 45/2018
s. 368.

Division 5—Residential Tenancies Amendment Act 2018

Sch. 1 cl. 15
inserted by
No. 45/2018
s. 368.

15 Definitions

In this Division—

fixed term tenancy agreement has the same meaning as the definition of *fixed term tenancy agreement* had in section 3(1) immediately before its repeal by the **Residential Tenancies Amendment Act 2018**;

periodic tenancy agreement has the same meaning as the definition of *periodic tenancy agreement* had in section 3(1) immediately before its repeal by the **Residential Tenancies Amendment Act 2018**;

tenancy agreement has the same meaning as the definition of *tenancy agreement* had in section 3(1) immediately before its repeal by the **Residential Tenancies Amendment Act 2018**;

tenant has the same meaning as the definition of *tenant* had in section 3(1) immediately before its repeal by the **Residential Tenancies Amendment Act 2018**.

Sch. 1 cl. 16
inserted by
No. 45/2018
s. 368.

16 Fixed term tenancy agreements

- (1) The amendments made to sections 17, 19, 26, 26A, 27, 27A, 30, 36, 37, 38, 39, 40, 41, 42, 43, 44, 49, 50, 66 by the **Residential Tenancies Amendment Act 2018** do not apply to—

- (a) a fixed term tenancy agreement entered into before the commencement of the applicable amendment until that agreement is terminated; and
 - (b) a periodic tenancy agreement that commenced before the commencement of the applicable amendment until that agreement is terminated.
- (2) Sections 17, 19, 26, 26A, 27, 27A, 30, 36, 37, 38, 39, 40, 41, 42, 43, 44, 49, 50 and 66 as in force immediately before the applicable amendment by the **Residential Tenancies Amendment Act 2018** continue to apply to—
 - (a) a fixed term tenancy agreement entered into before the commencement of that amendment until the end of that agreement; and
 - (b) a periodic tenancy agreement that commenced before the commencement of that amendment until the end of that agreement.
- (3) Sections 3A, 27B, 27C, Divisions 1A, 1B and 1C of Part 2 and sections 35A and 65A, as inserted by the **Residential Tenancies Amendment Act 2018**, do not apply to a fixed term tenancy agreement or a periodic tenancy agreement referred to in subclause (1).

* * * * *

Sch. 1 cl. 17
inserted by
No. 45/2018
s. 368,
repealed by
No. 47/2019
s. 52.

Sch. 1 cl. 18
inserted by
No. 45/2018
s. 368.

18 Residential rental agreements

Without limiting section 3B—

- (a) a reference in a tenancy agreement to a landlord is taken to be a reference to a residential rental provider, unless the context requires otherwise; and
- (b) a reference in a tenancy agreement to a tenant is taken to be a reference to a renter, unless the context requires otherwise; and
- (c) a reference in a tenancy agreement to a tenancy agreement is taken to be a reference to a residential rental agreement, unless the context requires otherwise.

Sch. 1 cl. 19
inserted by
No. 45/2018
s. 368.

19 Rooming house operators

On and from the commencement of the definition of *rooming house operator* in section 3(1), as inserted by the **Residential Tenancies Amendment Act 2018**, unless the context requires otherwise, a reference to a rooming house owner in any agreement under section 94 or in relation to a residency right under Part 3 is taken to be a reference to a rooming house operator.

Sch. 1 cl. 20
inserted by
No. 45/2018
s. 368.

20 Regulations dealing with transitional matters

- (1) The Governor in Council may make regulations containing provisions of a transitional nature, including matters of an application or savings nature, arising as a result of the enactment of the **Residential Tenancies Amendment Act 2018**, including the repeals and amendments made by that Act.
- (2) Regulations made under this clause may—
 - (a) have a retrospective effect to a day on or from the day on which the **Residential Tenancies Amendment Act 2018** received the Royal Assent; and

- (b) be of limited or general application; and
 - (c) leave any matter or thing to be decided by a specified person or class of person; and
 - (d) provide for the exemption of persons or things or a class of persons or things from any of the regulations made under this clause.
- (3) Regulations under this clause have effect despite anything to the contrary—
- (a) in any Act (other than the **Residential Tenancies Amendment Act 2018** or the **Charter of Human Rights and Responsibilities Act 2006**); or
 - (b) in any subordinate instrument.
- (4) This clause is **repealed** on the second anniversary of the day on which it comes into operation.

Sch. 2
amended by
No. 17/1999
s. 41(3),
substituted by
No. 103/2004
s. 67,
repealed by
No. 63/2010
s. 64(3),
new Sch. 2
inserted by
No. 38/2018
s. 310.

Schedule 2—Transitional provisions— Disability Service Safeguards Act 2018

1 Residential statements

- (1) This clause applies to a resident who is an SDA resident—
 - (a) living in a permanent dwelling that provides long-term accommodation to one or more SDA residents and that is enrolled as an SDA dwelling under the National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2016 of the Commonwealth; and
 - (b) who has been given a residential statement before the commencement day; and
 - (c) who, on the commencement day—
 - (i) has not entered into a tenancy agreement with an SDA provider; or
 - (ii) has not entered into an SDA residency agreement with an SDA provider; or
 - (iii) has not worked with an SDA provider to establish an SDA residency agreement.
- (2) On the commencement day, Part 5 of the **Disability Act 2006** as in force immediately before the commencement day, continues to apply to the SDA resident until the earlier of the following—
 - (a) the SDA resident enters into a tenancy agreement with an SDA provider;
 - (b) the SDA resident enters into an SDA residency agreement with an SDA provider;

- (c) the SDA resident works with the SDA provider to establish an SDA residency agreement;
 - (d) the end of 6 months after the commencement day.
- (3) In this clause—
- commencement day* means the day sections 293 and 313 of the **Disability Service Safeguards Act 2018** come into operation;
- disability service provider* has the same meaning as it has under section 3(1) of the **Disability Act 2006**;
- resident* has the same as it has in section 3(1) of the **Disability Act 2006**;
- residential statement* means the residential statement given to a person with a disability by disability service provider under Part 5 of the **Disability Act 2006**.

2 Regulations dealing with transitional matters

- (1) The Governor in Council may make regulations containing provisions of a transitional nature, including matters of an application or savings nature, arising as a result of the enactment of—
 - (a) Part 12A; and
 - (b) Division 2 of Part 18 and Part 19 of the **Disability Service Safeguards Act 2018**.
- (2) Regulations made under this clause may—
 - (a) have a retrospective effect to a day on or from the date that the **Disability Service Safeguards Act 2018** receives the Royal Assent; and
 - (b) be of limited or general application; and

- (c) differ according to differences in time, place or circumstances; and
 - (d) leave any matter or thing to be decided by a specified person or class of persons; and
 - (e) provide for the exemption of persons or matters or a class of persons or matters from any of the regulations made under this section.
- (3) Regulations made under this clause have effect despite anything to the contrary—
- (a) in any Act (other than this Act or the **Charter of Human Rights and Responsibilities Act 2006**); or
 - (b) in any subordinate instrument.
- (4) This clause is **repealed** on the second anniversary of the day on which it comes into operation.
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Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

Minister's second reading speech—

Legislative Assembly: 30 October 1997

Legislative Council: 20 November 1997

The long title for the Bill for this Act was "to re-enact with amendments the law relating to residential tenancies, rooming houses and caravan parks, to provide for a Residential Tenancies Tribunal and a Residential Tenancies Bond Authority, to repeal the **Residential Tenancies Act 1980**, the **Caravan Parks and Movable Dwellings Act 1988** and the **Rooming Houses Act 1990** and for other purposes."

The **Residential Tenancies Act 1997** was assented to on 23 December 1997 and came into operation as follows:

Part 1 (sections 1–25) on 23 December 1997: section 2(1); rest of Act on 1 July 1998: Government Gazette 18 June 1998 page 1512.

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in

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a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

2 Table of Amendments

This publication incorporates amendments made to the **Residential Tenancies Act 1997** by Acts and subordinate instruments.

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998, No. 52/1998

Assent Date: 2.6.98
Commencement Date: Ss 234–242 on 1.7.98: Government Gazette 18.6.98 p. 1512
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Licensing and Tribunal (Amendment) Act 1998, No. 101/1998

Assent Date: 1.12.98
Commencement Date: S. 32 on 1.2.99: Government Gazette 24.12.98 p. 3204
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Fair Trading (Inspectors Powers and Other Amendments) Act 1999, No. 17/1999

Assent Date: 18.5.99
Commencement Date: Ss 41, 42 on 1.9.99: Government Gazette 19.8.99 p. 1901
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Planning and Environment (Amendment) Act 2000, No. 28/2000

Assent Date: 30.5.00
Commencement Date: S. 22 on 31.5.00: s. 2(1)
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Business Registration Acts (Amendment) Act 2000, No. 35/2000

Assent Date: 6.6.00
Commencement Date: S. 50 on 19.6.00: Government Gazette 15.6.00 p. 1248
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Statute Law Revision Act 2000, No. 74/2000

Assent Date: 21.11.00
Commencement Date: S. 3(Sch. 1 item 108) on 22.11.00: s. 2(1)
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

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Statute Law Amendment (Authorised Deposit-taking Institutions) Act 2001, No. 11/2001

Assent Date: 8.5.01
Commencement Date: S. 3(Sch. item 63) on 1.6.01: s. 2(2)
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Statute Law Amendment (Relationships) Act 2001, No. 27/2001

Assent Date: 12.6.01
Commencement Date: S. 3(Sch. 1 item 10) on 28.6.01: Government Gazette 28.6.01 p. 1428
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Statute Law (Further Revision) Act 2002, No. 11/2002

Assent Date: 23.4.02
Commencement Date: S. 3(Sch. 1 item 56) on 24.4.02: s. 2(1)
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Residential Tenancies (Amendment) Act 2002, No. 45/2002

Assent Date: 22.10.02
Commencement Date: Ss 4–100 on 1.7.03: Government Gazette 5.6.03 p. 1287
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Fair Trading (Amendment) Act 2003, No. 30/2003

Assent Date: 27.5.03
Commencement Date: S. 91 on 28.5.03: s. 2(1)
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Residential Tenancies (Amendment) Act 2003, No. 93/2003

Assent Date: 25.11.03
Commencement Date: 30.6.04: s. 2(2)
Current State: All of Act in operation

Fair Trading (Enhanced Compliance) Act 2004, No. 103/2004

Assent Date: 21.12.04
Commencement Date: Ss 62–67 on 22.12.04: s. 2(1)
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 174) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

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Residential Tenancies (Further Amendment) Act 2005, No. 63/2005

Assent Date: 20.9.05
Commencement Date: Ss 4–6, 8, 14–31 on 20.9.05: s. 2(1); ss 7, 9–13 on 1.12.05: s. 2(3)
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Disability Act 2006, No. 23/2006

Assent Date: 16.5.06
Commencement Date: S. 248 on 1.7.07: s. 2(3)
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Infringements (Consequential and Other Amendments) Act 2006, No. 32/2006

Assent Date: 13.6.06
Commencement Date: S. 94(Sch. item 42) on 1.7.06: Government Gazette 29.6.06 p. 1315
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Children, Youth and Families (Consequential and Other Amendments) Act 2006, No. 48/2006

Assent Date: 15.8.06
Commencement Date: S. 42(Sch. item 30) on 23.4.07: s. 2(3)
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Water (Governance) Act 2006, No. 85/2006

Assent Date: 17.10.06
Commencement Date: S. 173(Sch. 1 item 9) on 1.7.07: s. 2(3)
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Fair Trading and Consumer Acts Amendment Act 2007, No. 17/2007

Assent Date: 29.5.07
Commencement Date: S. 36(Sch. item 12) on 30.5.07: s. 2(1)
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Fair Trading and Consumer Acts Further Amendment Act 2008, No. 2/2008

Assent Date: 11.2.08
Commencement Date: S. 60(Sch. item 10) on 12.2.08: s. 2(1)
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Consumer Credit (Victoria) and Other Acts Amendment Act 2008, No. 6/2008

Assent Date: 18.3.08
Commencement Date: S. 28 on 31.10.08: Government Gazette 30.10.08 p. 2530
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

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Relationships Act 2008, No. 12/2008

Assent Date: 15.4.08
Commencement Date: S. 73(1)(Sch. 1 item 51) on 1.12.08: s. 2(2)
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Unclaimed Money Act 2008, No. 44/2008

Assent Date: 26.8.08
Commencement Date: S. 114 on 1.1.09: s. 2(2)
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Family Violence Protection Act 2008, No. 52/2008

Assent Date: 23.9.08
Commencement Date: Ss 257–264 on 8.12.08: Special Gazette (No. 339) 4.12.08 p. 1
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Fair Trading and Other Acts Amendment Act 2009, No. 19/2009

Assent Date: 10.6.09
Commencement Date: S. 19 on 11.6.09: s. 2(1); ss 18, 20, 21 on 1.3.10: s. 2(3)
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009, No. 68/2009

Assent Date: 24.11.09
Commencement Date: S. 97(Sch. item 103) on 1.1.10: Government Gazette 10.12.09 p. 3215
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Consumer Affairs Legislation Amendment Act 2010, No. 1/2010

Assent Date: 9.2.10
Commencement Date: S. 109 on 1.8.10: Government Gazette 22.7.10 p. 1628
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Water Amendment (Entitlements) Act 2010, No. 32/2010

Assent Date: 8.6.10
Commencement Date: Ss 78, 79 on 1.1.11: s. 2(2)
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Supported Residential Services (Private Proprietors) Act 2010, No. 49/2010

Assent Date: 24.8.10
Commencement Date: S. 231 on 1.7.12 s. 2(2)
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

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Personal Safety Intervention Orders Act 2010, No. 53/2010 (as amended by No. 20/2011)

Assent Date: 7.9.10
Commencement Date: S. 221(Sch. item 9) on 5.9.11: Special Gazette (No. 271) 23.8.11 p. 1
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Consumer Affairs Legislation Amendment (Reform) Act 2010, No. 63/2010

Assent Date: 28.9.10
Commencement Date: S. 64 on 1.1.12: Special Gazette (No. 423) 21.12.11 p. 1
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Residential Tenancies Amendment Act 2010, No. 67/2010 (as amended by No. 36/2011)

Assent Date: 28.9.10
Commencement Date: Ss 4–75, 77–84, 90–170 on 1.9.11: Special Gazette (No. 265) 16.8.11 p. 1; ss 76, 85–89 on 31.3.12: s. 2(2)
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Fair Trading Amendment (Australian Consumer Law) Act 2010, No. 72/2010

Assent Date: 19.10.10
Commencement Date: S. 48(Sch. item 19) on 1.1.11: Special Gazette (No. 502) 20.12.10 p. 1
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Residential Tenancies Amendment (Public Housing) Act 2011, No. 18/2011

Assent Date: 31.5.11
Commencement Date: 1.6.11: s. 2
Current State: All of Act in operation

Water Amendment (Governance and Other Reforms) Act 2012, No. 17/2012

Assent Date: 3.4.12
Commencement Date: S. 94 on 1.7.12: Special Gazette (No. 172) 29.5.12 p. 1
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Australian Consumer Law and Fair Trading Act 2012, No. 21/2012

Assent Date: 8.5.12
Commencement Date: S. 239(Sch. 6 items 36.1, 36.4) on 1.7.12: Special Gazette (No. 214) 28.6.12 p. 1; s. 239(Sch. 6 items 36.2, 36.3, 36.5) on 1.9.12: Special Gazette (No. 291) 28.8.12 p. 1
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

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Statute Law Revision Act 2012, No. 43/2012

Assent Date: 27.6.12
Commencement Date: S. 3(Sch. item 42) on 28.6.12: s. 2(1)
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Residential Tenancies Amendment Act 2012, No. 47/2012

Assent Date: 21.8.12
Commencement Date: Ss 3–8, 9, 21, 30 on 1.10.12: Special Gazette (No. 324) 26.9.12 p. 1; ss 10–20, 22–29 on 1.5.13: Special Gazette (No. 163) 30.4.13 p. 1
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Residential Tenancies and Other Consumer Acts Amendment Act 2012, No. 56/2012

Assent Date: 18.9.12
Commencement Date: S. 5 on 19.9.12: s. 2(1); ss 8–12 on 1.2.13: Special Gazette (No. 444) 19.12.12 p. 1; ss 3, 4, 6, 7 on 31.3.13: s. 2(2); ss 13–18 on 1.8.13: Special Gazette (No. 277) 30.7.13 p. 1
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Consumer Affairs Legislation Amendment Act 2013, No. 57/2013

Assent Date: 22.10.13
Commencement Date: Ss 13–17 on 23.10.13: s. 2(3)
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Mental Health Act 2014, No. 26/2014

Assent Date: 8.4.14
Commencement Date: S. 455(Sch. item 25) on 1.7.14: s. 2(1)
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Victoria Police Amendment (Consequential and Other Matters) Act 2014, No. 37/2014

Assent Date: 3.6.14
Commencement Date: S. 10(Sch. item 144) on 1.7.14: Special Gazette (No. 200) 24.6.14 p. 2
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Privacy and Data Protection Act 2014, No. 60/2014

Assent Date: 2.9.14
Commencement Date: S. 140(Sch. 3 item 41) on 17.9.14: Special Gazette (No. 317) 16.9.14 p. 1
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

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Veterans and Other Acts Amendment Act 2015, No. 12/2015

Assent Date: 21.4.15
Commencement Date: S. 10 on 15.6.15: Special Gazette (No. 144) 9.6.15 p. 1
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Drugs, Poisons and Controlled Substances Amendment Act 2016, No. 2/2016

Assent Date: 16.2.16
Commencement Date: S. 18 on 20.10.16: s. 2(2)
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Consumer Acts and Other Acts Amendment Act 2016, No. 23/2016

Assent Date: 10.5.16
Commencement Date: Ss 25, 26 on 1.6.16: Special Gazette (No. 162) 24.5.16 p. 1; s. 24 on 30.9.16: s. 2(2)
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Rooming House Operators Act 2016, No. 26/2016

Assent Date: 10.5.16
Commencement Date: Ss 87–93 on 26.4.17: Special Gazette (No. 57) 7.3.17: p. 1
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

National Domestic Violence Order Scheme Act 2016, No. 53/2016

Assent Date: 18.10.16
Commencement Date: Ss 116–123 on 25.11.17: Special Gazette (No. 388) 15.11.17 p. 1
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Justice Legislation Amendment (Court Security, Juries and Other Matters) Act 2017, No. 38/2017

Assent Date: 29.8.17
Commencement Date: S. 91 on 30.8.17: s. 2(1)
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Disability Service Safeguards Act 2018, No. 38/2018 (as amended by No. 19/2019)

Assent Date: 28.8.18
Commencement Date: Ss 293–299, 302–310 on 1.7.19: Special Gazette (No. 254) 25.6.19 p. 1; ss 300, 301 never proclaimed, repealed by No. 19/2019 s. 234
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Residential Tenancies Amendment (Long-term Tenancy Agreements) Act 2018, No. 40/2018

Assent Date: 28.8.18
Commencement Date: Ss 4–18 on 1.2.19: s. 2(2)
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

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Residential Tenancies Amendment Act 2018, No. 45/2018

Assent Date: 18.9.18
Commencement Date: Ss 5(6), 123, 124, 235, 323–327 on 3.4.19: Special Gazette (No. 128) 2.4.19 p. 1; ss 34(5)(c), 53(4), 368 on 19.6.19: Special Gazette (No. 228) 12.6.19 p. 1
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Disability (National Disability Insurance Scheme Transition) Amendment Act 2019, No. 19/2019

Assent Date: 25.6.19
Commencement Date: Ss 147–212, 214 on 2.7.19: Special Gazette (No. 254) 25.6.19 p. 1
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Consumer Legislation Amendment Act 2019, No. 47/2019

Assent Date: 3.12.19
Commencement Date: Ss 52–54, 91–95 on 4.12.19: s. 2(1); ss 46–49 on 2.3.20: Special Gazette (No. 91) 25.2.20 p. 1
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

3 Amendments Not in Operation

This version does not contain amendments that are not yet in operation.

4 Explanatory details

No entries at date of publication.