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Authorised Version No. 100
Residential Tenancies Act 1997

No. 109 of 1997

Authorised Version incorporating amendments as at
1 July 2021

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 residential rental providers and renters of rented premises; and
- (b) to define the rights and duties of rooming house operators 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

S. 1(a)
amended by
No. 45/2018
s. 4(a).

S. 1(b)
amended by
No. 45/2018
s. 4(b).

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repealed by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

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

- (g) to provide for the establishment of the Residential Tenancies Bond Authority; and
- (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;

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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repealed by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
Nos 67/2010
s. 5(2),
45/2018
s. 5(3)(a).

- (a) an amount paid or payable by a renter
to secure his or her performance and
observance of the residential rental
agreement or any of the provisions of
this Act relating to the residential rental
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;

breach of duty notice, except in Division 9 of
Part 12A, means a notice served under
section 208;

S. 3(1) def. of
*breach of duty
notice*
inserted by
No. 45/2018
s. 5(1) (as
amended by
Nos 19/2019
s. 237(1),
47/2019
ss 50, 61(1)(2),
32/2020 s. 3,
1/2021
s. 87(1)).

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;

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

S. 3(1) def. of
common area
amended by
Nos 67/2010
s. 5(3),
45/2018
s. 5(3)(b).

condition report means—

- (a) for the purposes of Part 2, a condition report provided under section 35;
- (b) for the purposes of Part 3, a condition report provided under section 97;
- (c) for the purposes of Part 4, a condition report provided under section 148;
- (d) for the purposes of Part 4A, a condition report provided under section 206O;

S. 3(1) def. of *condition report* inserted by No. 45/2018 s. 5(1) (as amended by Nos 19/2019 s. 237(1), 47/2019 ss 50, 61(1)(2), 32/2020 s. 3, 1/2021 s. 87(1)).

Council has the same meaning as in section 3(1) of the **Local Government Act 2020**;

S. 3(1) def. of *Council* inserted by No. 56/2012 s. 14, amended by No. 9/2020 s. 390(Sch. 1 item 86).

deadlock means a deadlatch with at least one cylinder;

S. 3(1) def. of *deadlock* inserted by No. 45/2018 s. 5(1) (as amended by Nos 19/2019 s. 237(1), 47/2019 ss 50, 61(1)(2), 32/2020 s. 3, 1/2021 s. 87(1)).

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**;

S. 3(1) def. of
*Director's
guidelines*
inserted by
No. 45/2018
s. 5(1) (as
amended by
Nos 19/2019
s. 237(1),
47/2019
ss 50, 61(1)(2),
32/2020 s. 3,
1/2021
s. 87(1)).

Director's guidelines means any guidelines issued
by the Director under section 486;

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).

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);

duty provision means—

- (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
 - (iii) any provision of Division 5A of Part 2; or
- (b) in relation to a rooming house—
 - (i) section 140; or
 - (ii) any provision of Division 5 of Part 3, except section 111, 126 or 128; 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;

S. 3(1) def. of *duty provision* inserted by No. 45/2018 s. 5(1) (as amended by Nos 19/2019 s. 237(1), 47/2019 ss 50, 61(1)(2), 32/2020 s. 3, 1/2021 s. 87(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;

S. 3(1) def. of
*efficiency
rating system*
inserted by
No. 45/2018
s. 5(1) (as
amended by
Nos 19/2019
s. 237(1),
47/2019
ss 50, 61(1)(2),
32/2020 s. 3,
1/2021
s. 87(1)).

efficiency rating system means a system of rating the efficiency of any appliances, fixtures and fittings prescribed for the purposes of section 54(1), 69, 72(3), 129(4), 164(1), 181, 188(3), 188A(3) or 206ZZAA;

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

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 site
tenant*
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
*embedded
electricity
network*
inserted by
No. 45/2018
s. 5(1) (as
amended by
Nos 19/2019
s. 237(1),
47/2019
ss 50, 61(1)(2),
32/2020 s. 3,
1/2021
s. 87(1)).

embedded electricity network means a privately owned electricity network—

- (a) that serves more than one customer;
and
- (b) that connects to a distribution or transmission system in the national electronic grid through a parent connection point;

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 recognised non-local DVO; or
- (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 *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), amended by No. 45/2018 s. 5(3)(c).

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 *exclusive occupancy right* inserted by No. 63/2005 s. 4(a).

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;

S. 3(1) def. of *facilities* amended by Nos 67/2010 s. 5(4), 45/2018 s. 5(3)(d).

- (i) communications facilities;
- (j) lawns, gardens and outhouses;
- (k) stairways;
- (l) any area designed or set aside for common use by renters, residents or site tenants—

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

S. 3(1) def. of *fair wear and tear* inserted by No. 45/2018 s. 5(1) (as amended by Nos 19/2019 s. 237(1), 47/2019 ss 50, 61(1)(2), 32/2020 s. 3, 1/2021 s. 87(1)).

fair wear and tear means deterioration of the condition of premises caused by—

- (a) reasonable use of—
 - (i) the premises by a renter or a visitor; or
 - (ii) the SDA enrolled dwelling by an SDA resident; and
- (b) natural environmental forces;

S. 3(1) def. of *family member* inserted by No. 45/2018 s. 5(1) (as amended by Nos 19/2019 s. 237(1), 47/2019 ss 50, 61(1)(2), 32/2020 s. 3, 1/2021 s. 87(1)).

family member has the same meaning as in the **Family Violence Protection Act 2008**;

family violence has the same meaning as in the
Family Violence Protection Act 2008;

S. 3(1) def. of
*family
violence*
inserted by
No. 45/2018
s. 5(1) (as
amended by
Nos 19/2019
s. 237(1),
47/2019
ss 50, 61(1)(2),
32/2020 s. 3,
1/2021
s. 87(1)).

family violence intervention order has the
same meaning as in the **Family Violence
Protection Act 2008;**

New s. 3(1)
def. of *family
violence
intervention
order*
inserted by
No. 45/2018
s. 5(1) (as
amended by
Nos 19/2019
s. 237(1),
47/2019
ss 50, 61(1)(2),
32/2020 s. 3,
1/2021
s. 87(1)).

* * * * *

S. 3(1) defs of
*family
violence
intervention
order* and
*family
violence
safety notice*
inserted by
No. 52/2008
s. 257,
repealed by
No. 45/2018
s. 5(2) (as
amended by
No. 47/2019
s. 61(3)).

New s. 3(1)
def. of *family
violence
safety notice*
inserted by
No. 45/2018
s. 5(1) (as
amended by
Nos 19/2019
s. 237(1),
47/2019
ss 50, 61(1)(2),
32/2020 s. 3,
1/2021
s. 87(1)).

family violence safety notice has the same
meaning as in the **Family Violence
Protection Act 2008**;

S. 3(1) def. of
*fixed term
residential
rental
agreement*
inserted by
No. 45/2018
s. 5(1) (as
amended by
Nos 19/2019
s. 237(1),
47/2019
ss 50, 61(1)(2),
32/2020 s. 3,
1/2021
s. 87(1)).

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

S. 3(1) def. of
*fixed term
rooming
house
agreement*
inserted by
No. 45/2018
s. 5(1) (as
amended by
Nos 19/2019
s. 237(1),
47/2019
ss 50, 61(1)(2),
32/2020 s. 3,
1/2021
s. 87(1)).

fixed term rooming house agreement means an
agreement under section 93A;

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).

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S. 3(1) def. of *fixed term tenancy agreement* amended by No. 40/2018 s. 4(2), repealed by No. 45/2018 s. 5(2) (as amended by No. 47/2019 s. 61(3)).

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;

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

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).

- (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;

S. 3(1) def. of *information provider* inserted by No. 45/2018 s. 5(1) (as amended by Nos 19/2019 s. 237(1), 47/2019 ss 50, 61(1)(2), 32/2020 s. 3, 1/2021 s. 87(1)).

information provider means a person who carries on a business of providing information and includes—

- (a) the holder of a licence granted under the Broadcasting Services Act 1992 of the Commonwealth;
- (b) a person who is the provider of a broadcasting service under a class licence under that Act;
- (c) the holder of a licence continued in force by section 5(1) of the Broadcasting Services (Transitional

Provisions and Consequential
Amendments) Act 1992 of the
Commonwealth;

(d) the Australian Broadcasting
Corporation;

(e) the Special Broadcasting Service
Corporation;

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

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S. 3(1) def. of
landlord
repealed by
No. 45/2018
s. 5(2) (as
amended by
No. 47/2019
s. 61(3)).

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).

S. 3(1) def. of
*notice of
intention to
vacate*
inserted by
No. 45/2018
s. 5(1) (as
amended by
Nos 19/2019
s. 237(1),
47/2019
ss 50, 61(1)(2),
32/2020 s. 3,
1/2021
s. 87(1)).

notice of intention to vacate means—

- (a) in relation to rented premises, a notice of intention to vacate under Division 9 of Part 2;
- (b) in relation to a rooming house, a notice of intention to vacate under Division 10 of Part 3;
- (c) in relation to a residency right in respect of a site or a caravan in a caravan park, a notice of intention to vacate under Division 9 of Part 4;
- (d) in relation to a site agreement or a Part 4A site, a notice of intention to vacate under Division 11 of Part 4A;
- (e) in relation to an SDA enrolled dwelling under an SDA residency agreement, a notice of intention to vacate under section 498ZZA;

S. 3(1) def. of
*notice to
vacate*
inserted by
No. 45/2018
s. 5(1) (as
amended by
Nos 19/2019
s. 237(1),
47/2019
ss 50, 61(1)(2),
32/2020 s. 3,
1/2021
s. 87(1)).

notice to vacate means—

- (a) in relation to rented premises, a notice to vacate under Division 9 of Part 2;
- (b) in relation to a rooming house, a notice to vacate under Division 10 of Part 3;
- (c) in relation to a residency right in respect of a site or a caravan in a caravan park, a notice to vacate under Division 9 of Part 4;
- (d) in relation to a site agreement or a Part 4A site, a notice to vacate under Division 11 of Part 4A;
- (e) in relation to an SDA enrolled dwelling under an SDA residency agreement, a notice to vacate under section 498ZX;

occupation fee means the following—

- (a) a fee an owner of premises may require under section 388;
- (b) a fee ordered by the Tribunal under section 401(b);

S. 3(1) def. of *occupation fee* inserted by No. 45/2018 s. 5(1) (as amended by Nos 19/2019 s. 237(1), 47/2019 ss 50, 61(1)(2), 32/2020 s. 3, 1/2021 s. 87(1)).

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

owners corporation has the same meaning as in section 3 of the **Owners Corporations Act 2006**;

S. 3(1) def. of *owners corporation* inserted by No. 45/2018 s. 5(1) (as amended by Nos 19/2019 s. 237(1), 47/2019 ss 50, 61(1)(2), 32/2020 s. 3, 1/2021 s. 87(1)).

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).

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

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

(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;

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

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

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pecuniary penalty provision means a provision
set out in Schedule 1A;

S. 3(1) def. of
*pecuniary
penalty
provision*
inserted by
No. 45/2018
s. 5(1) (as
amended by
Nos 19/2019
s. 237(1),
47/2019
ss 50, 61(1)(2),
32/2020 s. 3,
1/2021
s. 87(1)).

periodic residential rental agreement means a
residential rental agreement other than a
fixed term residential rental agreement;

S. 3(1) def. of
*periodic
residential
rental
agreement*
inserted by
No. 45/2018
s. 5(1) (as
amended by
Nos 19/2019
s. 237(1),
47/2019
ss 50, 61(1)(2),
32/2020 s. 3,
1/2021
s. 87(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).

* * * * *

S. 3(1) def. of
*periodic
tenancy
agreement*
repealed by
No. 45/2018
s. 5(2) (as
amended by
No. 47/2019
s. 61(3)).

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;

S. 3(1) def. of *personal information* inserted by No. 45/2018 s. 5(1) (as amended by Nos 19/2019 s. 237(1), 47/2019 ss 50, 61(1)(2), 32/2020 s. 3, 1/2021 s. 87(1)).

personal information, other than in Part 10A, has the same meaning as in the **Privacy and Data Protection Act 2014**;

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

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

S. 3(1) def. of *personal violence* inserted by No. 45/2018 s. 5(1) (as amended by Nos 19/2019 s. 237(1), 47/2019 ss 50, 61(1)(2), 32/2020 s. 3, 1/2021 s. 87(1)).

personal violence means the following—

- (a) prohibited behaviour within the meaning of the **Personal Safety Intervention Orders Act 2010**;
- (b) stalking within the meaning of the **Personal Safety Intervention Orders Act 2010**;

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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), repealed by No. 45/2018 s. 5(2) (as amended by No. 47/2019 s. 61(3)).

principal registrar means principal registrar of the Tribunal;

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

prohibited term means a term referred to in section 26A(1)(a), 27B, 94AC, 94AD, 144AA, 144AB or 206FA;

S. 3(1) def. of *prohibited term* inserted by No. 45/2018 s. 5(1) (as amended by Nos 19/2019 s. 237(1), 47/2019 ss 50, 61(1)(2), 32/2020 s. 3, 1/2021 s. 87(1)).

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
*protected
person*
inserted by
No. 45/2018
s. 5(1) (as
amended by
Nos 19/2019
s. 237(1),
47/2019
ss 50, 61(1)(2),
32/2020 s. 3,
1/2021
s. 87(1)).

protected person means—

- (a) in relation to a family violence safety
notice, a protected person within the
meaning of the **Family Violence
Protection Act 2008**;
- (b) in relation to a family violence
intervention order, a protected person
within the meaning of the **Family
Violence Protection Act 2008**;
- (c) in relation to a recognised non-local
DVO, a protected person within the
meaning of the **National Domestic
Violence Order Scheme Act 2016**;
- (d) in relation to a personal safety
intervention order, a protected person
within the meaning of the **Personal
Safety Intervention Orders Act 2010**;

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;

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

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

recognised non-local DVO means non-local DVO that is a recognised DVO under the **National Domestic Violence Order Scheme Act 2016**;

S. 3(1) def. of *recognised non-local DVO* inserted by No. 45/2018 s. 5(1) (as amended by Nos 19/2019 s. 237(1), 47/2019 ss 50, 61(1)(2), 32/2020 s. 3, 1/2021 s. 87(1)).

registered agency has the same meaning as in section 4(1) of the **Housing Act 1983**;

S. 3(1) def. of *registered agency* inserted by No. 45/2018 s. 5(1) (as amended by Nos 19/2019 s. 237(1), 47/2019 ss 50, 61(1)(2), 32/2020 s. 3, 1/2021 s. 87(1)).

registered housing agency means—

- (a) a participating registered agency within the meaning of the **Housing Act 1983**;
or
- (b) a registered agency;

S. 3(1) def. of *registered housing agency* inserted by No. 45/2018 s. 5(1) (as amended by Nos 19/2019 s. 237(1), 47/2019 ss 50, 61(1)(2), 32/2020 s. 3, 1/2021 s. 87(1)).

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

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;

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

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
Registrar
repealed by
No. 52/1998
s. 235(2)(c).

* * * * *

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),
45/2018
s. 5(3)(f)(g).

rent (except in Part 12A) means—

- (a) in relation to a residential rental agreement, the amount paid to a residential rental provider by a renter 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 operator 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 renter, resident or site tenant is liable under section 52, 57, 108, 109A, 162 or 206ZE;

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

rental minimum standards means the standards prescribed under section 65A;

S. 3(1) def. of *rental minimum standards* inserted by No. 45/2018 s. 5(1) (as amended by Nos 19/2019 s. 237(1), 47/2019 ss 50, 61(1)(2), 32/2020 s. 3, 1/2021 s. 87(1)).

Rental Non-compliance Register means the register established under section 439P;

S. 3(1) def. of *Rental Non-compliance Register* inserted by No. 45/2018 s. 5(1) (as amended by Nos 19/2019 s. 237(1), 47/2019 ss 50, 61(1)(2), 32/2020 s. 3, 1/2021 s. 87(1)).

S. 3(1) def. of
rental rebate
inserted by
No. 45/2018
s. 5(1) (as
amended by
Nos 19/2019
s. 237(1),
47/2019
ss 50, 61(1)(2),
32/2020 s. 3,
1/2021
s. 87(1)).

rental rebate means a rebate of rent, or any other reduction in rent, granted to a renter or a resident of a rooming house by the Director of Housing or a registered agency;

S. 3(1) def. of
rented premises
amended by
No. 45/2018
s. 5(3)(h).

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

S. 3(1) def. of
renter
inserted by
No. 45/2018
s. 5(1) (as
amended by
Nos 19/2019
s. 237(1),
47/2019
ss 50, 61(1)(2),
32/2020 s. 3,
1/2021
s. 87(1)).

renter means—

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

S. 3(1) def. of
required time
inserted by
No. 45/2018
s. 5(1) (as
amended by
Nos 19/2019
s. 237(1),
47/2019
ss 50, 61(1)(2),
32/2020 s. 3,
1/2021
s. 87(1)).

required time means—

- (a) in relation to rented premises—
 - (i) for a duty under section 60 or 67, 7 days; or
 - (ii) 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
 - (iii) 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

- (iv) for any other duty under Division 5 or 5A 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
 - (ii) 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
 - (iii) for any other 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
 - (ii) 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
 - (iii) for a duty under section 206ZL or 206ZU, 7 days; or
 - (iv) for any other duty under Division 5 or Division 6 of Part 4A, 14 days;

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),
45/2018
s. 5(3)(i).

resident means—

- (a) in relation to a rooming house, a person who, with the agreement of the rooming house operator, 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 other than an occupant under an occupancy agreement which is expressed to be for holidaying or non-residential purposes for a period of 60 days or more;

residential rental 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) and includes a fixed term residential rental agreement and a periodic residential rental agreement;

S. 3(1) def. of *residential rental agreement* inserted by No. 45/2018 s. 5(1) (as amended by Nos 19/2019 s. 237(1), 47/2019 ss 50, 61(1)(2), 32/2020 s. 3, 1/2021 s. 87(1)).

residential rental provider means—

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

S. 3(1) def. of *residential rental provider* inserted by No. 45/2018 s. 5(1) (as amended by Nos 19/2019 s. 237(1), 47/2019 ss 50, 61(1)(2), 32/2020 s. 3, 1/2021 s. 87(1)).

residential rights contravention means—

- (a) a contravention of a pecuniary penalty provision; or
- (b) conduct in relation to a pecuniary penalty provision that is referred to in section 498AD(1)(b) to (g);

S. 3(1) def. of *residential rights contravention* inserted by No. 45/2018 s. 5(1) (as amended by Nos 19/2019 s. 237(1), 47/2019 ss 50, 61(1)(2), 32/2020 s. 3, 1/2021 s. 87(1)).

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;

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

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

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

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—

- (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;

S. 3(1) def. of *rooming house operator* inserted by No. 45/2018 s. 5(1) (as amended by Nos 19/2019 s. 237(1), 47/2019 ss 50, 61(1)(2), 32/2020 s. 3, 1/2021 s. 87(1)).

rooming house operator has the same meaning as in section 3(1) of the **Rooming House Operators Act 2016**;

S. 3(1) def. of *rooming house owner* repealed by No. 45/2018 s. 5(2) (as amended by No. 47/2019 s. 61(3)).

* * * * *

<i>rooming house provisions</i> 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 operator or a rooming house mortgagee;	S. 3(1) def. of <i>rooming house provisions</i> amended by No. 45/2018 s. 5(3)(j).
<i>Rooming House Register</i> means the register of rooming houses established under section 142E;	S. 3(1) def. of <i>Rooming House Register</i> inserted by No. 56/2012 s. 14.
<i>rooming house standard</i> means a standard prescribed under section 142C for the purposes of Division 8 of Part 3;	S. 3(1) def. of <i>rooming house standard</i> inserted by No. 56/2012 s. 3.
<i>SDA enrolled dwelling</i> means a permanent dwelling— <ul style="list-style-type: none">(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—<ul style="list-style-type: none">(i) an area or room exclusively occupied by an SDA resident and common areas shared by other	S. 3(1) def. of <i>SDA enrolled dwelling</i> inserted by No. 38/2018 s. 295(1), amended by No. 45/2018 s. 383.

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 residential rental
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;

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

SDA residency agreement 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 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 administrator 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).

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

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;

serious defect, in respect of a caravan and a Part 4A dwelling, means—

S. 3(1) def. of *serious defect* inserted by No. 45/2018 s. 5(1) (as amended by Nos 19/2019 s. 237(1), 47/2019 ss 50, 61(1)(2), 32/2020 s. 3, 1/2021 s. 87(1)).

- (a) the caravan or dwelling, including the exterior of the caravan or dwelling, is not in a reasonable state of cleanliness or repair; and
- (b) the condition of the caravan or dwelling poses a significant health or safety risk;

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

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

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

S. 3(1) def. of *services* amended by No. 45/2018 s. 5(3)(k).

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;

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

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

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

solar energy system means—

- (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);

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

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, except in Parts 12 and 12A, means the form prescribed for the purposes of section 26(1), (1A)(b) or (1B);

S. 3(1) def. of *standard form* inserted by No. 45/2018 s. 5(1) (as amended by Nos 19/2019 s. 237(1), 47/2019 ss 50, 61(1)(2), 32/2020 s. 3, 1/2021 s. 87(1)).

standard form tenancy agreement means—

- (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);

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

S. 3(1) def. of *substantiation notice* inserted by No. 45/2018 s. 5(1) (as amended by Nos 19/2019 s. 237(1), 47/2019 ss 50, 61(1)(2), 32/2020 s. 3, 1/2021 s. 87(1)).

substantiation notice means a notice given under section 510L(2);

S. 3(1) def. of *suitably qualified person* inserted by No. 45/2018 s. 5(1) (as amended by Nos 19/2019 s. 237(1), 47/2019 ss 50, 61(1)(2), 32/2020 s. 3, 1/2021 s. 87(1)).

suitably qualified person includes a tradesperson who is registered or licensed in respect of relevant work to be undertaken, if that work requires a person to be so registered or licensed;

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;

temporary crisis accommodation means accommodation provided—

- (a) for a prescribed period (if any); and
- (b) on a non-permanent basis; and
- (c) on a non-profit basis; and
- (d) which is prescribed to be temporary crisis accommodation;

* * * * *

* * * * *

S. 3(1) def. of *temporary crisis accommodation* inserted by No. 45/2002 s. 4, substituted by No. 45/2018 s. 5(3)(l) (as amended by No. 1/2021 s. 87(2)).

S. 3(1) def. of *tenancy agreement* amended by No. 38/2018 s. 295(2)(e), repealed by No. 45/2018 s. 5(2) (as amended by No. 47/2019 s. 61(3)).

S. 3(1) def. of *tenant* repealed by No. 45/2018 s. 5(2) (as amended by No. 47/2019 s. 61(3)).

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).

S. 3(1) def. of
*Uniform
Capital
Allowance
System*
inserted by
No. 45/2018
s. 5(1) (as
amended by
Nos 19/2019
s. 237(1),
47/2019
ss 50, 61(1)(2),
32/2020 s. 3,
1/2021
s. 87(1)).

Uniform Capital Allowance System means the Uniform Capital Allowance System in the publication known as the Australian Taxation Office Guide to Depreciating Assets 2017, issued in respect of Division 40 of Part 2–10 of the Income Tax Assessment Act 1997 of the Commonwealth, as in force from time to time;

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).

unregistrable movable dwelling means a movable dwelling that—

- (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;

S. 3(1) def. of
urgent repairs
amended by
Nos 38/2018
s. 295(2)(f)–(i),
45/2018
s. 5(4).

urgent repairs means any work necessary to repair or remedy—

- (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 residential rental provider in rented premises; or
- (ii) a rooming house operator 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
- (ia) a failure or breakdown of any cooling appliance or cooling service provided by a residential rental provider, rooming house operator, caravan park owner or caravan owner; or
- (ib) a failure to comply with any rental minimum standards; or
- (ic) a failure or breakdown of any safety-related devices, including a smoke alarm or pool fence; or
- (j) an appliance, fitting or fixture provided by a residential rental provider, rooming house operator, 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, including—

(i) a pest infestation; or

(ii) the presence of mould or damp
caused by or related to the
building structure; or

(l) a serious fault in a lift or staircase; or

(m) any damage of a prescribed class;

S. 3(1) def. of
*urgent site
repairs*
inserted by
No. 45/2018
s. 5(1) (as
amended by
Nos 19/2019
s. 237(1),
47/2019
ss 50, 61(1)(2),
32/2020 s. 3,
1/2021
s. 87(1)).

urgent site repairs means any work prescribed as
urgent repairs to—

(a) a site or a Part 4A site; or

(b) in the case of a caravan park, any
structure or fixture owned by a caravan
park owner on a site; or

(c) in the case of a Part 4A park, any
structure or fixture owned by a site
owner on a site; or

(d) any damage of a prescribed class;

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

S. 3(1) def. of
visitor
amended by
Nos 67/2010
s. 5(7),
45/2018
s. 5(3)(m).

visitor in relation to—

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

(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 residential rental provider or a renter is a reference to a residential rental provider or a renter under a residential rental agreement to which this Act applies. S. 3(2)
amended by
No. 45/2018
s. 5(5).
- (3) For the purposes of the definition of *domestic partner* in subsection (1)— 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).
- (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(4)
inserted by
No. 45/2002
s. 27(2).

3A Objectives of this Act

The objectives of this Act are to facilitate—

- (a) clarity and certainty as to the rights and responsibilities of the following—
- (i) residential rental providers and renters under residential rental agreements;
 - (ii) rooming house operators and residents in relation to residency rights in rooming houses;

S. 3A
inserted by
No. 45/2018
s. 6.

- (iii) caravan park owners, caravan owners and residents in relation to residency rights and agreements in respect of those rights;
 - (iv) site owners and site tenants under site agreements; and
- (b) the provision of appropriate security of tenure and safe and habitable premises to renters, residents of rooming houses and caravan parks and site tenants; and
- (c) a regulatory framework that enables residential rental providers, rooming house operators, caravan park owners, caravan owners and site owners to receive a fair return for providing safe and habitable premises, rooms and sites and Part 4A sites; and
- (d) the provision to residential rental providers, rooming house operators, caravan park owners, caravan owners, site owners, renters, residents and site tenants of—
 - (i) effective mechanisms to resolve disputes; and
 - (ii) the ability to enforce rights under residential rental agreements, residency rights, site agreements and under this Act; and
- (e) residential rental providers, rooming house operators, caravan park owners, caravan owners, site owners, renters, residents and site tenants—
 - (i) to meet their obligations, even if there are changed circumstances; and

- (ii) to take a responsible approach to their obligations to each other and to visitors and neighbours at premises, rooming houses, caravan parks and Part 4A parks.

3B References to landlords, tenants and tenancy agreements

S. 3B
inserted by
No. 45/2018
s. 6.

- (1) For the purposes of this Act—
 - (a) a reference to a residential rental provider includes a landlord; and
 - (b) a reference to a renter includes a tenant; and
 - (c) a reference to a residential rental agreement includes a tenancy agreement or tenancy.
- (2) Unless this Act expressly provides or the context otherwise requires, despite the changes in terminology made by the **Residential Tenancies Amendment Act 2018**—
 - (a) in relation to rented premises within the meaning of this Act, the law in respect of landlords continues to apply to residential rental providers; and
 - (b) in relation to rented premises within the meaning of this Act, the law in respect of tenants continues to apply to renters; and
 - (c) the law in respect of tenancy agreements and tenancies continues to apply to residential rental agreements.
- (3) Nothing in this section applies to a tenancy to which the **Retail Leases Act 2003** or any other prescribed enactment or law applies.

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
Nos 67/2010
s. 6(1),
45/2018
s. 341(1).

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

Pt 1 Div. 2
Subdiv. 1
(Heading)
amended by
No. 45/2018
s. 341(2).

Subdivision 1—Application to residential rental agreements

5 Application of Act to assignees and transferees

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

S. 5(1)(a)
amended by
No. 45/2018
s. 342(1)(a).

(a) a residential rental provider under a residential rental agreement; or

S. 5(1)(b)
amended by
No. 45/2018
s. 342(1)(b).

(b) a renter under a residential rental 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. 5(2)
amended by
No. 45/2018
s. 342(2).

(2) Nothing in subsection (1) operates to confer any rights under this Act on an assignee of a renter if the assignment is not in accordance with this Act.

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

* * * * *

S. 6
amended by
No. 6/2008
s. 28,
repealed by
No. 40/2018
s. 5.¹

7 Premises used primarily as a residence

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

- (1) This Act applies to a residential rental agreement if the rented premises are used primarily for residential purposes even if a trade, profession or business is also carried on by the renter 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
- (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(1)
amended by
No. 45/2018
s. 342(6).

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

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

8 Premises connected to premises used for trade or business

S. 8
amended by
No. 45/2018
s. 342(7).

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

S. 9
amended by
No. 45/2018
s. 342(8)(a).

9 Principal place of residence

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

S. 9(a)
amended by
No. 45/2018
s. 342(8)(b).

- (a) immediately before the agreement was entered into, the rented premises were the residential rental provider's principal place of residence; and
- (b) the fixed term is less than 60 days; and
- (c) the agreement states that—

S. 9(c)(i)
amended by
No. 45/2018
s. 342(8)(c)(i).

- (i) immediately before the agreement was entered into, the rented premises were the residential rental provider's principal place of residence; and

S. 9(c)(i)
amended by
No. 45/2018
s. 342(8)
(a)(c)(ii).

- (ii) the residential rental provider intends to resume occupancy of the premises on termination of the residential rental agreement.

S. 10
amended by
No. 45/2018
s. 342(9).

10 Premises used for holidays

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

S. 11
amended by
No. 45/2018
s. 342(10).

11 Farming and grazing

This Act does not apply to a residential rental agreement if the rented premises are included in or on other premises let to the renter by the residential rental provider 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 residential rental agreement created or arising under the terms of a contract of employment or entered into in relation to such a contract.

S. 12
amended by
No. 45/2018
s. 342(11).

13 Contracts of sale or mortgages

This Act does not apply to a residential rental 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.

S. 13
amended by
No. 45/2018
s. 342(12).

14 Prescribed premises and prescribed agreements

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

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

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

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

S. 15
(Heading)
inserted by
No. 45/2018
s. 342(15).

15 Certain provisions not to apply to residential rental agreements

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

* * * *

S. 15(2)
amended by
Nos 1/2010
s. 109(b),
45/2018
s. 342(16).

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

Subdivision 2—Application to rooming houses

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

* * * *

S. 17
(Heading)
inserted by
No. 45/2018
s. 7(1).

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

S. 17
amended by
No. 45/2018
s. 7(2).

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

18 Self-contained apartments

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

- (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

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

- (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.

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

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) On the request of the Director of Housing, the Minister, by notice published in the Government Gazette, may declare the following to be a rooming house for the purposes of this Act—

S. 19(3)
inserted by
No. 45/2002
s. 7,
substituted by
No. 45/2018
s. 8.

- (a) a building owned or leased by the Director of Housing and containing one or more self-contained apartments; or
- (b) a building owned or leased by a registered housing provider within the meaning of the **Housing Act 1983** or registered housing association within the meaning of that Act and containing one or more self-contained apartments.

S. 19(4)
inserted by
No. 45/2002
s. 7,
substituted by
No. 45/2018
s. 8.

- (4) A notice under subsection (3) may be published on the Internet.

Pt 1 Div. 2
Subdiv. 3
(Heading)
amended by
No. 45/2018
s. 342(17).

Subdivision 3—Application to residential rental agreements and rooming houses

20 Hotels and motels

S. 20(1)
amended by
Nos 74/2000
s. 3(Sch. 1
item 108),
45/2018
s. 343(1).

- (1) Subject to subsections (2) and (3), this Act does not apply to a residential rental 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(2)
amended by
No. 45/2018
s. 343(1).

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

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

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

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

21 Educational institutions

S. 21(1)
amended by
No. 45/2018
s. 343(2).

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

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

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

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

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

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

Note

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

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

22 Temporary crisis accommodation

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

S. 22
substituted by
No. 45/2002
s. 10,
amended by
No. 45/2018
s. 343(3).

S. 23
amended by
No. 45/2018
s. 343(4).

23 Health or residential services

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

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

- (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.

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

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).

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

Subdivision 4—Application to site agreements

S. 23A
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. 23B
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.

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

S. 23D
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. 23E
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. 23F
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.

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

Division 3—Exemptions by Tribunal

24 Application for exemption

S. 24(1)
amended by
No. 45/2018
s. 9(1).

- (1) A residential rental provider or renter may apply to the Tribunal for an order declaring that a provision of this Act does not apply to the residential rental agreement.

S. 24(2)
amended by
No. 45/2018
s. 9(2).

- (2) A rooming house operator, 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.

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

- (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.

25 Order of Tribunal

S. 25(1)
amended by
No. 45/2018
s. 10(1).

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

S. 25(1)
amended by
No. 45/2018
s. 10(2).

- (2) On an application under section 24(2), the Tribunal, after hearing the rooming house operator, 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.

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

- (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.

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

- | | |
|---|---|
| (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)—
<div style="margin-left: 40px;">(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.</div> | S. 25(4)
amended by
No. 67/2010
s. 8(2). |
| (5) An order under this section has effect according to its terms. | |

Pt 2 (Heading)
amended by
No. 45/2018
s. 344(1).

Part 2—Residential tenancies—residential rental agreements

Pt 2 Div. 1
(Heading)
amended by
No. 45/2018
s. 344(2).

Division 1—General requirements for residential rental agreements

S. 26
(Heading)
inserted by
No. 45/2018
s. 11(1).

26 Residential rental agreements to be in standard form

S. 26(1)
substituted by
Nos 40/2018
s. 6(1),
45/2018
s. 11(2).

- (1) If a residential rental agreement for a fixed term not exceeding 5 years is in writing, it must be in the prescribed standard form for a fixed term residential rental agreement of no more than 5 years.

S. 26(1A)
inserted by
No. 40/2018
s. 6(2),
amended by
No. 45/2018
s. 11(3)(a).

- (1A) A residential rental agreement for a fixed term of more than 5 years—

(a) must be in writing; and

S. 26(1A)(b)
substituted by
No. 45/2018
s. 11(3)(b).

(b) must be in the prescribed standard form for a fixed term residential rental agreement of more than 5 years unless it is in the form referred to in subsection (1).

S. 26(1B)
inserted by
No. 1/2021
s. 82.

- (1B) If a periodic residential rental agreement is in writing it must be in the prescribed standard form for a periodic residential rental agreement.

S. 26(2)
amended by
Nos 67/2010
s. 91, 40/2018
s. 6(3),
45/2018
s. 11(4)(6).

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

Penalty: 25 penalty units.

- | | |
|--|---|
| (2A) A residential rental provider or renter must not prepare or authorise the preparation of a residential rental agreement for a fixed term of more than 5 years if the agreement is not either— | S. 26(2A) inserted by No. 40/2018 s. 6(4), amended by No. 45/2018 s. 11(5) (a)–(c)(6). |
| (a) in the standard form for a fixed term not exceeding 5 years; or | S. 26(2A)(a) substituted by No. 45/2018 s. 11(5)(d). |
| (b) in the standard form for a fixed term of more than 5 years. | S. 26(2A)(b) substituted by No. 45/2018 s. 11(5)(d). |
| Penalty: 25 penalty units. | |
| (3) A failure to comply with this section does not make the residential rental agreement illegal, invalid or unenforceable. | S. 26(3) amended by No. 45/2018 s. 11(7). |
| Notes | |
| 1. Section 27C provides that terms about cleaning and safety-related repairs and related obligations may be included in a residential rental agreement in the standard form. | Note to s. 26 inserted by No. 38/2018 s. 297, substituted as Notes by No. 45/2018 s. 11(8) (as amended by No. 32/2020 s. 4). ² |
| 2. In the case of a residential rental provider who is an SDA provider providing an SDA enrolled dwelling to an SDA resident, see Division 2 of Part 12A. | |

S. 26A
(Heading)
substituted by
No. 45/2018
s. 12(1) (as
amended by
No. 1/2021
s. 88(1)).

26A Offence to include prohibited term in residential rental agreement

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

S. 26A(1)
substituted by
No. 45/2018
s. 12(2) (as
amended by
No. 1/2021
s. 88(2)).

- (1) A residential rental provider or renter must not prepare or authorise the preparation of a residential rental agreement that contains—
 - (a) a prescribed prohibited term for a residential rental agreement; or
 - (b) a term referred to in section 27B.

Penalty: 25 penalty units.

S. 26A(2)
amended by
No. 45/2018
s. 12(3)(a) (as
amended by
No. 1/2021
s. 88(3)), (b).

- (2) If a residential rental agreement contains a prohibited term, that term is void and unenforceable.

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

27 Invalid terms

S. 27(1)
substituted by
No. 45/2018
s. 13(1).

- (1) A term of a residential rental agreement that is additional to the terms contained in the standard form is invalid if—
 - (a) it purports to exclude, restrict or modify, or purports to have the effect of excluding, restricting or modifying—
 - (i) the application to that residential rental agreement of all or any of the provisions of this Act; or

- (ii) the exercise of a right conferred by this Act; or
- (b) it is a prohibited term or a term that this Act provides must not be included in a residential rental agreement.

Note

Section 27A provides for terms that are additional to the terms contained in the standard form.

- | | |
|---|---|
| (2) A term referred to in subsection (1) includes a term that is not set out in the residential rental agreement but is incorporated in it by another term of the residential rental agreement. | S. 27(2)
amended by
No. 45/2018
s. 13(2). |
| (3) Subsection (1) does not apply to a term of a standard form for a fixed term of more than 5 years that is inconsistent with, or varies the requirements of, this Part. | S. 27(3)
amended by
No. 45/2018
s. 13(3). |
| * * * * | S. 27(4)
repealed by
No. 45/2018
s. 13(4). |

Note

The Tribunal may declare under sections 28 and 472 that a term of a residential rental agreement is invalid.

Note to s. 27
inserted by
No. 45/2018
s. 13(5).

27A Additional terms in fixed term residential rental agreements

S. 27A
(Heading)
substituted by
No. 45/2018
s. 14(1).

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

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|---|--|
| (1AA) A residential rental agreement for a fixed term of not more than 5 years that is in the standard form may include a term agreed by the parties which is additional to the terms contained in the standard form. | S. 27A(1AA)
inserted by
No. 45/2018
s. 14(2). |
|---|--|

S. 27A(1)
amended by
No. 45/2018
s. 14(3).

- (1) Subject to subsection (2), a residential rental 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 for that agreement.

S. 27A(2)
amended by
No. 45/2018
s. 14(4)(a)(5).

- (2) A person must not include an additional term in a residential rental agreement for a fixed term of more than 5 years if the additional term—

S. 27A(2)(a)
amended by
No. 45/2018
s. 14(4)(a).

- (a) excludes, restricts or modifies a provision of the standard form for that agreement; or

- (b) purports to exclude, restrict or modify a provision of the standard form tenancy agreement for that agreement.

Penalty: 25 penalty units.

S. 27B
inserted by
No. 45/2018
s. 15.

27B Prohibited terms—general

- (1) A residential rental agreement must not include any of the following terms—
- (a) a term that requires the renter to take out any form of insurance;
- (b) a term that exempts the residential rental provider from liability for an act of—
- (i) the residential rental provider or that person's agent; or
- (ii) a person acting on behalf of the residential rental provider or that person's agent;
- (c) a term that provides that if the renter contravenes the residential rental agreement, the renter is liable to pay—
- (i) all or part of the remaining rent under the residential rental agreement; or
- (ii) increased rent; or

- (iii) a penalty; or
 - (iv) liquidated damages;
 - (d) a term that requires all or part of the rented premises to be professionally cleaned at the end of the tenancy, unless that term is contained in the standard form;
 - (e) a term that requires the renter to pay the cost of having all or part of the rented premises professionally cleaned at the end of the tenancy, unless that term is contained in the standard form;
 - (f) a term that provides that, if the renter does not contravene the residential rental agreement—
 - (i) the rent is reduced; or
 - (ii) the rent may be reduced; or
 - (iii) the renter is to be paid a rebate or other benefit; or
 - (iv) the renter may be paid a rebate or other benefit;
 - (g) any other prescribed prohibited term.
- (2) A term in a written residential rental agreement or any other agreement must not include a term that requires a party to a written residential rental agreement to bear any fees, costs or charges incurred by the other party in connection with the preparation of the residential rental agreement.

Note

Section 27 provides that terms which must not be included in a residential rental agreement are invalid.

S. 27C
inserted by
No. 45/2018
s. 15.

27C Prescribed terms—professional cleaning, maintenance and related obligations

- (1) A residential rental agreement in the standard form may include—
 - (a) a prescribed term providing for all or part of the rented premises to be professionally cleaned if, during the term of the residential rental agreement, professional cleaning becomes required to restore the premises to the condition they were in immediately before the start of the tenancy, taking into account fair wear and tear; and
 - (b) a prescribed term providing for the renter to pay the cost of having all or part of the rented premises professionally cleaned if, during the term of the residential rental agreement, professional cleaning becomes required to restore the premises to the condition they were in immediately before the start of the tenancy, taking into account fair wear and tear.
- (2) A residential rental agreement in the standard form may include a prescribed term that sets out safety-related activities to be completed by the residential rental provider and the renter during the term of the agreement.

Note

Section 63A provides for the safety-related duties of a renter.

28 Harsh and unconscionable terms

S. 28(1)
amended by
No. 45/2018
s. 344(3).

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

- (2) On an application under subsection (1), the Tribunal may by order declare invalid or vary a term of the residential rental 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.

S. 28(2)
amended by
No. 45/2018
s. 344(4).

29 Copy of agreement to be made available to renter

S. 29
(Heading)
inserted by
No. 45/2018
s. 16(1).

- (1) A residential rental provider must not give a renter—

S. 29(1)
amended by
Nos 67/2010
s. 92, 45/2018
s. 16
(2)(a)(b)(d)(3).

- (a) a proposed residential rental agreement; or

S. 29(1)(a)
amended by
No. 45/2018
s. 16(2)(c).

- (b) any other document which contains terms that are proposed to form part of the residential rental agreement—

S. 29(1)(b)
amended by
No. 45/2018
s. 16(2)(c).

to sign unless the residential rental provider has given the renter a copy of that proposed agreement or other document for the renter's own use.

Penalty: 25 penalty units.

S. 29(2)
amended by
Nos 67/2010
s. 92, 45/2018
s. 16(4)(5).

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

Penalty: 25 penalty units.

Note to s. 29
inserted by
No. 38/2018
s. 298,
amended by
No. 45/2018
s. 385.

Note

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

S. 29A
inserted by
No. 45/2018
s. 17.

29A Residential rental agreement signed by the renter but not by the residential rental provider

- (1) Without limiting section 26(3), if a renter has signed a residential rental agreement and given it to the residential rental provider or that person's agent and the residential rental provider has not signed it, the residential rental agreement has the same effect as if it were signed by the residential rental provider if the residential rental provider or that person's agent—
- (a) accepts rent without reservation; or
 - (b) otherwise acted in part performance of the residential rental agreement.
- (2) A residential rental agreement has effect under subsection (1) from—
- (a) the day on which the rent was accepted, if the residential rental provider or that person's agent has accepted rent without reservation; or
 - (b) if the residential rental provider or that person's agent has otherwise acted in part performance of the residential rental

agreement, the day on which the act was performed.

- (3) Section 53 of the **Property Law Act 1958** does not prevent a residential rental agreement from having effect under this section.

29B Application to Tribunal to order preparation of residential rental agreement

S. 29B
inserted by
No. 45/2018
s. 17.

- (1) A renter may apply to the Tribunal for an order requiring a residential rental provider to prepare and enter into a written residential rental agreement.
- (2) The Tribunal may make an order requiring a residential rental provider to prepare and enter into a written residential rental agreement if the Tribunal is satisfied that—
- (a) the residential rental provider and renter are subject to an existing residential rental agreement that is not in writing or that is only partly in writing; and
 - (b) the renter is continuing in occupation of the rented premises after a previous fixed term residential rental agreement has ended.
- (3) The order may specify—
- (a) the terms of the residential rental agreement; and
 - (b) a commencement date for the residential rental agreement which may be a date that is before the date the order was made.

Pt 2 Div. 1A
(Heading and
s. 29C)
inserted by
No. 45/2018
s. 18.

Division 1A—Discrimination in relation to residential rental agreements

S. 29C
inserted by
No. 45/2018
s. 18.

29C Residential rental agreement application forms must include prescribed information

A residential rental provider or that person's agent must not provide a person with an application form to apply to enter into a residential rental agreement unless the application form includes a statement that contains the prescribed information.

S. 30
(Heading)
inserted by
No. 45/2018
s. 19(1).

30 Renters with children

S. 30(1)
amended by
Nos 67/2010
s. 93, 45/2018
s. 19(2)(3).

(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 residential rental agreement on the ground that the other person intends to live on the premises with a child.

Penalty: 25 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) Subject to subsection (3A), 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.

S. 30(3)
amended by
No. 45/2018
s. 19(4).

(3A) A person must not apply to the Tribunal under subsection (3) if the person has brought a dispute under Part 8 of the **Equal Opportunity Act 2010** in respect of a claim or facts which could form the basis of an application under subsection (3).

S. 30(3A)
amended by
No. 45/2018
s. 19(5).

(4) In this section *child* means a child under 16 years of age.

30A Residential rental provider must not unlawfully discriminate against another person by refusing to let rented premises

S. 30A
inserted by
No. 45/2018
s. 20 (as
amended by
No. 32/2020
s. 5).

(1) A residential rental provider must not contravene section 52 of the **Equal Opportunity Act 2010** by refusing to let rented premises to a person on the basis of an attribute set out in section 6 of that Act.

(2) A residential rental provider must not instruct or permit that person's agent to refuse to let rented premises to a person on the basis of an attribute set out in section 6 of the **Equal Opportunity Act 2010**.

- (3) It is not a contravention of this section for an entity specified in subsection (4)—
 - (a) to refuse to let rented premises; or
 - (b) to carry out any other function referred to in that subsection.
- (4) For the purposes of subsection (3), the following are specified entities—
 - (a) the Director of Housing or the Director of Housing's agent;
 - (b) a registered agency or the registered agency's agent;
 - (c) an authorised person (within the meaning of section 4(1) of the **Housing Act 1983**) who provides rented premises for a purpose referred to in section 142A(2)(a) of that Act;
 - (d) a person who provides rented premises in accordance with a determination made under section 142E of the **Housing Act 1983**;
 - (e) a person who provides rented premises as affordable housing within the meaning of section 3AA of the **Planning and Environment Act 1987**.
- (5) If the Director of Housing makes a determination under section 142E(1) of the **Housing Act 1983** that relates to an attribute of a person referred to in section 6 of the **Equal Opportunity Act 2010**, that determination is not a contravention of this section.

Note

Section 210AA provides that a person may apply to the Tribunal for an order for compensation if the person has suffered loss as a result of discrimination by the residential rental provider or that person's agent in contravention of this Division.

Division 1B—Disclosures and representations prior to entering into residential rental agreements

Pt 2 Div. 1B
(Heading and
ss 30B–30E)
inserted by
No. 45/2018
s. 21 (as
amended by
No. 47/2019
s. 62).

30B Restriction on use of personal information provided by prospective renters

S. 30B
inserted by
No. 45/2018
s. 21 (as
amended by
No. 47/2019
s. 62).

A residential rental 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 a residential rental agreement unless the use is for—

- (a) assessing the person's suitability as a renter;
or
- (b) any other requirement of this Act.

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

30C Residential rental provider must not request prescribed information from applicants

S. 30C
inserted by
No. 45/2018
s. 21 (as
amended by
No. 47/2019
s. 62).

A residential rental provider or that person's agent must not request a person who applies to enter into a residential rental agreement to disclose the prescribed information.

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

S. 30D
inserted by
No. 45/2018
s. 21 (as
amended by
No. 47/2019
s. 62).

30D Information that residential rental providers must disclose before entering residential rental agreement

Before entering into a residential rental agreement, a residential rental provider must disclose the following information to the renter—

- (a) if the residential rental provider has engaged an agent to sell the rented premises or prepared a contract of sale, that there is a proposal to sell the rented premises;
- (b) if a mortgagee has commenced a proceeding to enforce a mortgage over the rented premises, that a mortgagee is taking action for possession of the rented premises;
- (c) if the residential rental provider is not the owner of the rented premises, that the residential rental provider has a right to let the rented premises;
- (d) if the rented premises are supplied with electricity from an embedded electricity network, the prescribed details of the embedded electricity network;
- (e) any other prescribed information in relation to the rented premises.

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

300 penalty units in the case of a body corporate.

S. 30E
inserted by
No. 45/2018
s. 21 (as
amended by
No. 47/2019
s. 62).

30E Misleading or deceptive conduct inducing a person to enter a residential rental agreement

(1) This section applies to—

- (a) a residential rental provider who is not acting in trade or commerce in entering into a residential rental agreement; and

- (b) the agent of a residential rental provider referred to in paragraph (a) who is not acting in trade or commerce.
- (2) A residential rental provider or that person's agent must not induce a person to enter into a residential rental agreement by engaging in conduct that is misleading or deceptive, or that is likely to mislead or deceive.
- (3) A residential rental provider or that person's agent must not induce a person to enter into a residential rental agreement by making a false or misleading representation concerning any of the following—
 - (a) the residential rental provider's interest in the land;
 - (b) the rent payable under the agreement;
 - (c) the location of the premises to be let under the agreement;
 - (d) the characteristics of the premises to be let under the agreement;
 - (e) the use to which the premises to be let under the agreement are capable of being put or may lawfully be put;
 - (f) the existence or availability of facilities associated with the premises to 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).

Note

Section 472(1A) provides for orders that the Tribunal may make on an application or in proceedings in respect of a contravention of this section.

Pt 2 Div. 1C
(Heading and
ss 30F, 30G)
inserted by
No. 45/2018
s. 21 (as
amended by
No. 47/2019
s. 62).

Division 1C—Rental auctions prohibited

S. 30F
inserted by
No. 45/2018
s. 21 (as
amended by
No. 47/2019
s. 62).

30F Rented premises must be offered for rent at a fixed amount

- (1) Subject to subsection (2), a residential rental provider or that person's agent must not advertise or otherwise offer premises unless the rent under the residential rental agreement is advertised or offered as a fixed amount.

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

300 penalty units in the case of a body corporate.

- (2) A person does not commit an offence against subsection (1) if the person places a sign at or near premises for rent—
- (a) that advertises or offers premises for rent; and
 - (b) that does not state an amount of rent for premises.

- (3) A residential rental provider or that person's agent must not solicit or otherwise invite an offer of an amount of rent that is higher than the advertised amount of rent for the rented premises.

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

300 penalty units in the case of a body corporate.

30G Residential rental provider or that person's agent must not engage in false or misleading advertising of rent for rental premises

S. 30G
inserted by
No. 45/2018
s. 21 (as
amended by
No. 47/2019
s. 62).

- (1) This section applies to—
- (a) a residential rental provider who is not acting in trade or commerce in entering into a residential rental agreement; and
 - (b) the agent of a residential rental provider referred to in paragraph (a) who is not acting in trade or commerce.
- (2) A residential rental provider or that person's agent who promotes or advertises rented premises must not make a false or misleading representation in relation to the rent for the premises.
- Penalty: 60 penalty units in the case of a natural person;
- 300 penalty units in the case of a body corporate.
- (3) This section does not limit the operation of the Australian Consumer Law (Victoria).

Division 2—Bonds

31 What is the maximum bond?

S. 31(1)
amended by
Nos 67/2010
s. 94, 45/2018
s. 22(1)(2).

- (1) Subject to this Act, a person must not demand or accept in relation to a residential rental agreement a bond the total of which exceeds—

S. 31(1)(a)
amended by
No. 45/2018
s. 22(1).

- (a) the amount of rent payable under the residential rental 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.

Penalty: 60 penalty units.

S. 31(2)
repealed by
No. 45/2018
s. 22(3).

* * * *

S. 31(3)
amended by
No. 45/2018
s. 22(4).

- (3) Subsection (1) does not apply to a residential rental agreement if the weekly amount of rent payable under the agreement exceeds the prescribed amount.

S. 32
amended by
No. 45/2018
s. 345(1).

32 Application to increase maximum amount of bond

A residential rental provider who wishes to demand a bond in relation to a residential rental agreement or proposed residential rental 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 residential rental agreement or proposed residential rental agreement; and
- (b) the character and condition of the rented premises.

S. 33(a)
amended by
No. 45/2018
s. 345(2).

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

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

- (1) A person must not demand or accept a bond for a subsequent residential rental agreement under which a renter continues in occupation of rented premises if that renter—

S. 34(1)
amended by
No. 45/2018
s. 23 (1)(a)(b)
(as amended
by
No. 47/2019
s. 63(1)), (2).

- (a) has paid a bond for the initial residential rental agreement under which the amount of rent payable for one week does not exceed the amount prescribed for the purposes of section 31; and
- (b) continues in occupation of those premises under the subsequent residential rental agreement.

S. 34(1)(a)
substituted by
No. 45/2018
s. 23(1)(c) (as
amended by
No. 47/2019
s. 63(2)).

S. 34(1)(b)
amended by
No. 45/2018
s. 23(1)(a).

Penalty: 60 penalty units.

S. 34(2)
inserted by
No. 40/2018
s. 9,
substituted by
No. 45/2018
s. 23(3).

- (2) An additional bond may be paid in the prescribed manner.

S. 34(3)
inserted by
No. 45/2018
s. 23(3).

- (3) This section does not apply to—
- (a) a residential rental agreement for a fixed term of more than 5 years in the form referred to in section 26(1A)(b); or
 - (b) an additional bond payable in respect of a renter's obligation to restore any modification the renter has made to the rented premises under section 64.

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

34A Additional amount of bond proportionate with rent increase

S. 34A(1)
amended by
No. 45/2018
s. 345(3)(c).

- (1) This section applies to a residential rental agreement for a fixed term of more than 5 years in the standard form residential rental agreement referred to in section 26(1A)(b)(ii).

S. 34A(2)
amended by
No. 45/2018
s. 345(3)(a)(b).

- (2) The residential rental provider may require the renter to pay an additional amount of bond, if—

S. 34A(2)(a)
amended by
No. 45/2018
s. 345(3)(a)(b).

- (a) the residential rental provider has given 120 days written notice in a form approved by the Director to the renter requiring an additional payment of bond; and

S. 34A(2)(b)
amended by
No. 45/2018
s. 345(3)(a)(b).

- (b) the additional payment of bond is required by the residential rental provider after the expiry of a period of 5 years of continuous occupation by the renter; and

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No. 109 of 1997

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| (c) the fixed term of the residential rental agreement— | S. 34A(2)(c) amended by No. 45/2018 s. 345(3)(c). |
| (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 residential rental agreement; or | S. 34A(2)(c)(iii) amended by No. 45/2018 s. 345(4). |
| (iv) commences after the expiry of a fixed term residential rental agreement, whether in the form prescribed for the purposes of section 26(1) or 26(1A)(b)(ii). | S. 34A(2)(c)(iv) amended by No. 45/2018 s. 345(3)(c). |
|
(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 residential rental agreement by using the rent payable at the commencement of the next 5 year period of the residential rental agreement as a basis for that bond's calculation; and | S. 34A(3)(a) amended by No. 45/2018 s. 345(3)(c). |
| (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 residential rental agreement, the rent payable is \$400 per week. The bond is 4 weeks rent, or \$1600. For the next 5 year period of the residential rental 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 residential rental agreement,

Example to s. 34A(3) amended by No. 45/2018 s. 345(3).

the residential rental provider would be permitted to require the renter to pay an additional amount of bond for \$480. This amount is proportionate to the increase in rent payable under the residential rental agreement.

S. 34A(4)
amended by
No. 45/2018
s. 345(3)(b).

- (4) The additional amount of bond referred to in subsection (3) must be paid by the renter on or before the end of the period of notice referred to in subsection (2)(a).

S. 34A(5)
amended by
No. 45/2018
s. 345(3)(a)(c).

- (5) The residential rental provider must not require an additional amount of bond more than once in any 5 year period of a residential rental agreement to which this section applies.

S. 34B
(Heading)
amended by
No. 45/2018
s. 345(5).

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

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

S. 34B(1)
amended by
No. 45/2018
s. 345(3)(a)(b).

- (1) If a residential rental provider requires an additional amount of bond under section 34A, the renter may apply to VCAT—

S. 34B(1)(a)
amended by
No. 45/2018
s. 345(3)(a)(c).

- (a) to vary any term in the residential rental agreement that permits the residential rental provider to require an additional amount of bond; or

- (b) to vary the amount of additional amount of bond to be paid.

S. 34B(2)
amended by
No. 45/2018
s. 345(3)(b).

- (2) VCAT may make any order that VCAT considers appropriate if satisfied that not making an order would result in severe hardship for the renter.

(3) In making an order under subsection (2), VCAT is to have regard to—

- | | |
|--|--|
| (a) whether the residential rental provider or renter are otherwise in breach of any term of the residential rental agreement or this Act; and | S. 34B(3)(a) amended by No. 45/2018 s. 345(3). |
| (b) the financial circumstances of the renter and the residential rental provider; and | S. 34B(3)(b) amended by No. 45/2018 s. 345(3)(a)(b). |
| (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) Before a renter enters into occupation of rented premises, a residential rental provider must give the renter 2 copies of a condition report signed by or on behalf of the residential rental provider 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, substituted by No. 45/2018 s. 24(1). |
|---|---|

Penalty: 25 penalty units.

- | | |
|---|---|
| (1A) For the purposes of subsection (1), a residential rental provider is deemed to give 2 copies of a condition report to the renter if the residential rental provider gives the renter an electronic copy of the condition report. | S. 35(1A) inserted by No. 45/2018 s. 24(1). |
|---|---|

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|---|---|
| (1B) A condition report must be in the prescribed form. | S. 35(1B) inserted by No. 45/2018 s. 24(1). |
|---|---|

Note

Section 506(1)(da) provides that a document to be served on or given to a person under this Act may be served or given by electronic communication in accordance with the **Electronic Transactions (Victoria) Act 2000**.

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S. 35(2)
amended by
No. 45/2018
s. 24(2).

- (2) Within 5 business days after entering into occupation of the rented premises, the renter must return one copy of the condition report to the residential rental provider—

S. 35(2)(a)
amended by
No. 45/2018
s. 24(2)(b).

- (a) signed by or on behalf of the renter; or

S. 35(2)(b)
amended by
No. 45/2018
s. 24(2)(b).

- (b) with an endorsement so signed to the effect that the renter agrees or disagrees with the whole or any specified part of the report.

S. 35(3)
inserted by
No. 45/2018
s. 24(3).

- (3) A renter who is not given a condition report within the period referred to in subsection (1) may complete a condition report and give it to the residential rental provider, or that person's agent, during the period between inspecting the rented premises and 5 business days after entering into occupation of the rented premises.

S. 35(4)
inserted by
No. 45/2018
s. 24(3).

- (4) A copy of the condition report that is completed under subsection (1) or (3) is to be retained by the residential rental provider and the renter.

S. 35(5)
inserted by
No. 45/2018
s. 24(3).

- (5) Within 10 days after the end of a residential rental agreement, the residential rental provider, or that person's agent, must complete the copy of the condition report retained by the residential rental provider or the renter under this section—

- (a) in the presence of the other party; or
(b) in the absence of the other party, if the party has given the absent other party a reasonable opportunity to be present when the condition report is completed.

35A Residential rental provider or renter may apply to Tribunal to amend inaccurate or incomplete condition report

S. 35A
inserted by
No. 45/2018
s. 25.

- (1) Within 30 days after a residential rental agreement has commenced, the residential rental provider or renter may apply to the Tribunal to amend a statement in a condition report on the basis that the statement is inaccurate or incomplete.
- (2) On an application under subsection (1), the Tribunal may order—
 - (a) that the condition report is to be amended in the manner specified in the order; or
 - (b) that the condition report is not required to be amended.
- (3) This section does not limit the operation of sections 18, 29, 30, 151 and 152 of the Australian Consumer Law (Victoria).

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 residential rental provider and the renter.
- (1A) A condition report that is given to a residential rental provider is taken to be notice given to the residential rental provider of any defects or outstanding repairs stated in the report.
- (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

S. 36(1)
amended by
No. 45/2018
s. 26(1).

S. 36(1A)
inserted by
No. 45/2018
s. 26(2).

S. 36(2)(b)
substituted by
No. 45/2018
s. 26(3).

(b) any statement in the report about which the renter records a written comment disagreeing with that statement on the copy of the report completed by the renter; or

S. 36(2)(c)
inserted by
No. 45/2018
s. 26(3).

(c) a statement that the residential rental provider has disagreed with in writing on the condition report, if the report was completed by the renter before it was completed by the residential rental provider.

37 Certain guarantees prohibited

S. 37(1)
amended by
Nos 67/2010
s. 97, 45/2018
s. 27(1)(2).

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

Penalty: 60 penalty units.

S. 37(2)
amended by
No. 45/2018
s. 27(3).

(2) This section does not apply to a residential rental agreement referred to in section 31(3).

(3) A guarantee obtained in contravention of this section is invalid and unenforceable.

38 Maximum amount of certain guarantees

S. 38(1)
amended by
No. 45/2018
s. 28(1).

(1) If a renter—

(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 residential rental agreement—

S. 38(1)(b)
amended by
No. 45/2018
s. 28(1)(b).

the guarantee is unenforceable against the guarantor to the extent to which the amount guaranteed exceeds the amount of rent payable

under the residential rental agreement for
1 month.

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

S. 38(2)
amended by
No. 45/2018
s. 28(2).

Division 3—Rents

39 Accrual of rent

For the purposes of this Act, rent under a residential rental agreement accrues from day to day and, subject to section 91ZH, is recoverable or refundable on that basis.

S. 39
amended by
No. 45/2018
ss 29,
240A(Sch. 1
item 1)(as
amended by
No. 47/2019
ss 83, 90).

40 Limit on rent in advance

- (1) A residential rental provider must not require a renter to pay rent under a residential rental agreement more than 1 month in advance.

Penalty: 60 penalty units.

- (2) Subsection (1) does not apply if the amount of rent payable for each week under the residential rental agreement exceeds the amount of rent prescribed for the purposes of section 31.

S. 40(1)
amended by
Nos 67/2010
s. 98, 45/2018
s. 30(1)(2).

S. 40(2)
substituted by
No. 45/2018
s. 30(3).

41 Rent in advance under weekly residential rental agreement

Despite section 40, a residential rental provider must not require a renter to pay rent under a residential rental 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: 60 penalty units.

S. 41
(Heading)
inserted by
No. 45/2018
s. 31(1).

S. 41
amended by
Nos 67/2010
s. 99, 45/2018
s. 31(2)(3).

42 Where and how is rent to be paid?

S. 42(1)
amended by
No. 45/2018
s. 32(1).

- (1) The rent under a residential rental 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.

S. 42(2)
amended by
No. 45/2018
s. 32(2).

- (2) Subject to this section, the rent under a residential rental agreement is payable in the manner (if any) specified in the agreement.

S. 42(3)
inserted by
No. 45/2018
s. 32(3) (as
amended by
No. 32/2020
s. 6).

- (3) A residential rental provider or that person's agent must not require a renter to pay rent by a cheque or other negotiable instrument that is post-dated.

Penalty: 60 penalty units.

S. 42(4)
inserted by
No. 45/2018
s. 32(3) (as
amended by
No. 32/2020
s. 6).

- (4) A residential rental 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 renter's bank account) is reasonably available to the renter.

Penalty: 60 penalty units.

S. 42(5)
inserted by
No. 45/2018
s. 32(3) (as
amended by
No. 32/2020
s. 6).

- (5) Without limiting how rent is paid, a residential rental provider or that person's agent must permit the renter 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.

S. 42(5A)
inserted by
No. 45/2018
s. 32(3) (as
amended by
No. 32/2020
s. 6).

- (5A) Subsection (5) does not apply to the Director of Housing or the Director's agent.

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|---|---|
| (6) Without limiting subsection (5), the residential rental provider and the renter, by agreement, may change the manner in which rent is payable under the residential rental agreement. | S. 42(6)
inserted by
No. 45/2018
s. 32(3) (as
amended by
No. 32/2020
s. 6). |
| (7) The residential rental provider or that person's agent must give the renter information about any costs (including third party transaction fees, direct debit dishonour fees and any other electronic payment facility fees) that the renter may incur by using a particular payment method before the renter consents to use the payment method. | S. 42(7)
inserted by
No. 45/2018
s. 32(3) (as
amended by
No. 32/2020
s. 6). |

43 Receipts for rent

- | | |
|---|---|
| (1) A person who receives a payment of rent from a renter 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. 43(1)
amended by
Nos 67/2010
s. 100, 45/2018
s. 33(1)(2). |
| (2) If a person receives a payment of rent from a renter 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 | S. 43(2)
substituted by
No. 45/2002
s. 11,
amended by
Nos 67/2010
s. 100, 45/2018
s. 33(3)(4). |

S. 43(2)(b)
amended by
No. 45/2018
s. 33(3).

- (b) if a renter 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 renter.

Penalty: 25 penalty units.

S. 43(2A)
inserted by
No. 45/2002
s. 11,
amended by
Nos 67/2010
s. 100, 45/2018
s. 33(5)(6).

- (2A) If a renter 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 renter within 5 business days after receiving the request.

Penalty: 25 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—

S. 43(3)(a)
amended by
No. 45/2018
s. 33(7).

- (a) the name of the renter 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 Rent increases

S. 44
(Heading)
inserted by
No. 45/2018
s. 34(1).

- (1) A residential rental provider must give a renter at least 60 days notice in the prescribed form of a proposed rent increase.

S. 44(1)
amended by
Nos 45/2002
s. 12(1)(a),
45/2018
s. 34(2).

- (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—

S. 44(3)
amended by
No. 45/2002
s. 12(1)(b),
substituted by
No. 45/2018
s. 34(3).

- (a) the amount of the rent increase; and
- (b) the method by which the rent increase was calculated; and
- (c) a statement informing the renter of the renter'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.

- (4) A residential rental provider under a fixed term residential rental agreement must not increase the rent before the term ends unless the agreement—

S. 44(4)
substituted by
No. 45/2018
s. 34(4).

- (a) provides for a rent increase within the fixed term of a specified amount and the increase is not more than that amount; or
- (b) specifies the method by which a rent increase within the fixed term is to be calculated and the increase is not more than an amount calculated using the specified method.

Residential Tenancies Act 1997
No. 109 of 1997

Part 2—Residential tenancies—residential rental agreements

S. 44(4A)
inserted by
No. 45/2002
s. 12(2),
amended by
No. 45/2018
s. 34(5).

- (4A) A residential rental provider must not increase the rent payable under a residential rental agreement at intervals of less than 12 months.

S. 44(4B)
inserted by
No. 45/2018
s. 34(6).

- (4B) For the purposes of this section, rent is not increased merely because—
- (a) a rental rebate is applied, adjusted or cancelled under a residential rental agreement where the residential rental provider is the Director of Housing or a registered agency; and
 - (b) the application, adjustment or cancellation of that rental rebate caused an increase in the amount payable by the renter under that residential rental agreement.
- (5) A rent increase in contravention of this section is invalid.

S. 45
(Heading)
inserted by
No. 45/2018
s. 346(1).

45 Renter may complain to Director about excessive rent

S. 45(1)
amended by
No. 45/2018
s. 346(2)(a).

- (1) A renter may apply to the Director to investigate and report if the renter—

S. 45(1)(a)
amended by
No. 45/2018
s. 346(2)(b).

- (a) considers that the rent under a residential rental agreement is excessive having regard to the fact that the residential rental provider has reduced or withdrawn services, facilities or other items provided with the rented premises; or

S. 45(1)(b)
amended by
No. 45/2018
s. 346(2)(a).

- (b) has received a notice of a rent increase and the renter 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 renter and a copy of the report to the residential rental provider. S. 45(3)(b) amended by No. 45/2018 s. 346(3).
- (4) The report of the Director must—
- (a) include a statement informing the renter of the renter's right under section 46 to apply to the Tribunal for an order in respect of the proposed rent; and S. 45(4)(a) amended by No. 45/2018 s. 346(4).
 - (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 renter may apply to the Tribunal for an order declaring the rent or proposed rent excessive. S. 45(1) amended by No. 45/2018 s. 346(5).
- (2) An application under subsection (1) must—
- (a) be made within 30 days after the renter receives the Director's report; S. 46(2)(a) amended by Nos 52/1998 s. 236(a)(i), 45/2018 s. 346(6).

* * * * *

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

S. 46(3)
amended by
No. 45/2018
s. 346(7).

(3) If a renter has received a notice of a rent increase and the renter considers that the proposed rent is excessive, the renter 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.

S. 46(5)
amended by
No. 45/2018
s. 346(8).

(5) The Tribunal may grant leave under subsection (3) if it is satisfied that there are reasonable grounds for the renter'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.

S. 47(3)
amended by
No. 45/2018
s. 346(9)(a).

(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 renter having regard to—

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|---|---|
| (a) the rent payable for comparable rented premises let under a residential rental agreement by a residential rental provider, other than a public statutory authority, in the same locality; | S. 47(3)(a)
amended by
No. 45/2018
s. 346(9)(b). |
| (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 residential rental provider is or may be liable under this Act or any other Act or the residential rental agreement; | S. 47(3)(d)
amended by
No. 45/2018
s. 346(9)(c). |
| (e) the cost of goods and services and facilities provided by the renter under the residential rental agreement; | S. 47(3)(e)
amended by
No. 45/2018
s. 346(9)(d). |
| (f) any charges payable by the renter under this Act or any other Act or the residential rental agreement; | S. 47(3)(f)
amended by
No. 45/2018
s. 346(9)(e). |
| (g) any work which the renter has done with the residential rental provider's consent or agreed with the residential rental provider to do to the premises; | S. 47(3)(g)
amended by
No. 45/2018
s. 346(9)(f). |
| (h) any changes in the rent and the condition of the rented premises or facilities since the commencement of the residential rental agreement and since the last rent increase; | S. 47(3)(h)
amended by
No. 45/2018
s. 346(9)(g). |
| (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; | S. 47(3)(ha)
inserted by
No. 45/2002
s. 13. |
| (i) any valuation of the rented premises. | |

S. 47(4)
amended by
No. 45/2018
s. 346(10).

- (4) If the Tribunal makes an order under subsection (1)(a) in relation to rented premises, the residential rental provider cannot require the renter 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.

48 Tribunal can order refund of rent

S. 48(1)
amended by
No. 45/2018
s. 346(11).

- (1) If the Tribunal makes an order under section 47, the Tribunal may include in the order a provision requiring the residential rental provider to refund to the renter an amount equal to the difference between—

S. 48(1)(a)
amended by
No. 45/2018
s. 346(12).

- (a) the amount of rent payable under the residential rental agreement for the period commencing on the day that the renter—
- (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.

S. 48(2)
amended by
No. 45/2018
s. 346(13).

- (2) The order may specify the procedure for the refund to the renter.

S. 49
(Heading)
inserted by
No. 45/2018
s. 35(1).

49 Renter's goods not to be taken for rent

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

S. 49
amended by
Nos 67/2010
s. 101, 45/2018
s. 35(2)(3).

Penalty: 60 penalty units.

Division 4—Other charges

50 Application and holding deposits

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

S. 50
amended by
Nos 67/2010
s. 102, 45/2018
s. 36.

- (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: 60 penalty units.

51 Certain charges prohibited

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

S. 51(1)
amended by
Nos 67/2010
s. 103, 45/2018
s. 37(1)(2).

Penalty: 60 penalty units.

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

S. 51(2)
amended by
Nos 67/2010
s. 103, 45/2018
s. 37(3)(4).

Penalty: 60 penalty units.

- (3) A person must not demand or receive from a renter a charge or indemnity for a charge in relation to—

S. 51(3)
inserted by
No. 45/2002
s. 14,
amended by
Nos 67/2010
s. 103, 45/2018
s. 37(5)(a)(6).

S. 51(3)(a)
amended by
No. 45/2018
s. 37(5)(b).

- (a) the first issue of a rent payment card under a residential rental agreement; or

S. 51(3)(b)
amended by
No. 45/2018
s. 37(5)(b)(c).

- (b) the establishment or use of direct debit facilities or any other electronic payment facility for payment of rent under a residential rental agreement.

Penalty: 60 penalty units.

S. 52
amended by
Nos 47/2019
s. 92, 17/2012
s. 94(1),
substituted by
No. 45/2018
s. 38 (as
amended by
No. 47/2019
s. 96).

52 Renter's liability for various utility charges

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

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

- (iii) all sewage disposal charges imposed during the renter's occupation of the rented premises by a water corporation under the **Water Act 1989**.

53 Residential rental provider's liability for various utility charges

S. 53
(Heading)
inserted by
No. 45/2018
s. 39(1).

- (1) Subject to section 53AA, a residential rental provider is liable for—

S. 53(1)
amended by
Nos 47/2019
s. 93, 45/2018
s. 39(2)(a).

- (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;

- (ab) all rates, taxes or charges payable under any Act other than charges payable by the renter under this Division;

S. 53(1)(ab)
inserted by
No. 45/2018
s. 39(2)(b).

- (b) all charges in respect of the supply or use of electricity, gas (except bottled gas) or oil by the renter at rented premises that are not separately metered;

S. 53(1)(b)
amended by
No. 45/2018
s. 39(2)(c).

- (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) water charges in respect of rented premises which are not separately metered, including—

S. 53(1)(d)
substituted by
No. 45/2018
s. 39(2)(d).

- (i) all sewage disposal charges imposed by a water corporation under the **Water Act 1989**; and
 - (ii) all costs and charges related to a water supply service; and
 - (iii) water supplied to the rented premises;

Residential Tenancies Act 1997

No. 109 of 1997

Part 2—Residential tenancies—residential rental agreements

S. 53(1)(e)
amended by
No. 17/2012
s. 94(2),
repealed by
No. 45/2018
s. 39(2)(e).

* * * *

(f) all charges related to the supply of sewerage services or the supply or use of drainage services to or at the rented premises;

S. 53(1)(g)
amended by
No. 45/2018
s. 39(2)(f).

(g) all charges related to the supply or hire of gas bottles to the rented premises;

S. 53(1)(h)
inserted by
No. 45/2018
s. 39(2)(g).

(h) any other prescribed charges.

S. 53(2)
amended by
No. 45/2018
s. 39(3).

(2) A residential rental provider may agree to take over liability for any cost or charge for which the renter is liable under section 52.

S. 53(3)
amended by
No. 45/2018
s. 39(4).

(3) An agreement under subsection (2) must be in writing and be signed by the residential rental provider.

S. 53A
inserted by
No. 45/2018
s. 40 (as
amended by
No. 47/2019
s. 97).

53A Residential rental provider's liability for excessive usage caused by faults

(1) Subject to subsection (2), if a renter has been charged for excessive usage of a service at the rented premises caused by a fault in infrastructure or any fixtures or buildings at or connected to the premises, the residential rental provider is liable for that part of the excessive charge that is additional to an amount of ordinary usage by the renter.

Example

Excessive usage charges caused by a leak in the underground pipe of a water service connected to rented premises.

- (2) A residential rental provider is not liable for excessive usage charges under subsection (1) unless—
 - (a) the renter notified the residential rental provider, as soon as practicable, of—
 - (i) the excessive usage charges; and
 - (ii) the fault that caused the excessive usage; and
 - (b) the fault was not caused by any action or omission of the renter.
- (3) A residential rental provider must reimburse a renter for any reasonable costs incurred by the renter for diagnosis of a fault referred to in subsection (1) conducted by a suitably qualified person.
- (4) A residential rental provider is not responsible for any excess usage charges or other costs for a fault caused by any property that is the responsibility of a service provider.

53B Application to Tribunal about excessive usage charges

S. 53B
inserted by
No. 45/2018
s. 40 (as
amended by
No. 47/2019
s. 97).

- (1) A residential rental provider or a renter may apply to the Tribunal to determine the liability of the residential rental provider and the renter for excessive usage charges referred to in section 53A.
- (2) In making a determination under subsection (1), the Tribunal is to have regard to the following—
 - (a) whether the renter had knowledge of the fault;
 - (b) whether the renter took reasonable steps to notify the residential rental provider, or that person's agent, of the fault;

- (c) whether the renter has been compensated by another person for any part of the excessive usage charges;
- (d) whether the residential rental provider has complied with this Act in respect of any urgent repairs;
- (e) any diagnosis made by a water authority or other suitably qualified person in respect of the fault;
- (f) any maintenance and repairs conducted by the residential rental provider;
- (g) any other matter the Tribunal considers appropriate.

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

53AA Agreements relating to installation of solar energy system

S. 53AA(1)
amended by
No. 45/2018
s. 347(1AA)
(as
amended by
No. 47/2019
s. 99).

- (1) A residential rental provider and renter may enter an agreement under which the renter 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 Residential rental provider's liability for charges for supply to non-complying appliances

S. 54
(Heading)
inserted by
No. 45/2018
s. 41(1).

- (1) A residential rental provider is liable to pay for the cost of water, electricity or gas supplied to or used at the rented premises for as long as the residential rental provider is in breach of section 69 or of any law requiring the use of an appliance, fitting or fixture with a rating that is of or above a prescribed level of rating in the efficiency rating system 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(1)
amended by
No. 45/2018
s. 41(2)(a)
(ab) (as
amended by
No. 47/2019
s. 64(1)),
(b) (as
amended by
No. 47/2019
s. 64(2)).

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

54A Residential rental provider to give key or security device to renters

S. 54A
inserted by
No. 45/2018
s. 42.

- (1) A residential rental provider, at the residential rental provider's expense, must give each renter who has signed the residential rental agreement—
- (a) a key or another security device to enable each renter to access and enjoy the rented premises; or
 - (b) a key and another security device if both are required to enable each renter to access and enjoy the rented premises.
- (2) If a renter requests an additional key or security device, the residential rental provider may charge the renter a reasonable fee for giving the additional key or security device to the renter.

55 Reimbursement

S. 55(1)
amended by
No. 45/2018
s. 347(1).

- (1) If a residential rental provider pays for anything for which the renter is liable under section 52, the renter must reimburse the residential rental provider 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.

S. 55(2)
amended by
No. 45/2018
s. 347(2).

- (2) If a renter pays for anything for which the residential rental provider is liable under section 53 or 54, the residential rental provider must reimburse the renter 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 Residential rental provider must not seek overpayment for utility charge

S. 56
(Heading)
inserted by
No. 45/2018
s. 43(1).

S. 56(1)
amended by
Nos 45/2002
s. 15, 67/2010
s. 104, 45/2018
s. 43(2)(3).

- (1) The residential rental provider 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 renter.

Penalty: 60 penalty units.

S. 56(2)
amended by
No. 45/2002
s. 15,
substituted by
No. 45/2018
s. 43(4).

- (2) If the relevant supplier of the utility has issued an account to the residential rental provider, any amount to be recovered from the renter for the account must be adjusted by deducting any concession or rebate to which the renter is entitled.

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

- (a) must be claimed by the renter and the residential rental provider has given the renter an opportunity to claim it and the renter does not do so by the payment date set by the relevant supplier of the utility; or
- (b) is paid directly to the renter as a refund.

S. 56(3)(a)
amended by
Nos 45/2002
s. 15, 45/2018
s. 43(5).

S. 56(3)(b)
amended by
No. 45/2018
s. 43(5)(a).

57 Director of Housing or registered housing agency may impose service charge

S. 57
(Heading)
inserted by
No. 45/2018
s. 44(1).

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

S. 57(1)
amended by
No. 45/2018
s. 44(2).

(2) Subsection (1) only applies if it is not possible or practicable to accurately measure the use by the renter of that service or facility.

S. 57(2)
amended by
No. 45/2018
s. 44(3).

(2A) A service charge must not exceed the cost of providing the service or facility to the renter.

S. 57(2A)
inserted by
No. 45/2018
s. 44(4).

(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.

(3A) If the Director of Housing or a registered housing agency imposes or varies a service charge on a renter, the Director of Housing or the registered housing agency, as the case requires, must give written notice to the renter of—

S. 57(3A)
inserted by
No. 45/2018
s. 44(5).

- (a) the imposition of the service charge; or
- (b) the increase or decrease made to the service charge, including particulars of the change in the cost of providing the services or facilities referred to in subsection (3).

S. 57(4)
amended by
No. 45/2018
s. 44(6).

- (4) This section applies despite anything to the contrary in any residential rental agreement.

S. 57(4A)
inserted by
No. 45/2018
s. 44(7).

- (4A) A renter may apply to the Tribunal for an order requiring the Director of Housing, or the registered housing agency, as the case requires, to withdraw or vary the amount of a service charge imposed under subsection (1).

S. 57(4B)
inserted by
No. 45/2018
s. 44(7).

- (4B) On an application under subsection (4A), the Tribunal may order the Director of Housing or the registered housing agency, as the case requires, to—
 - (a) withdraw the service charge; or
 - (b) vary the amount of the service charge; or
 - (c) otherwise vary the service charge as the Tribunal thinks fit.

- (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

S. 58(1)
amended by
No. 45/2018
s. 347(3).

- (1) A residential rental provider under a residential rental agreement must indemnify the renter for any amount recoverable from the renter 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 residential rental agreement for a period exceeding 1 year.

S. 58(2)(b)
amended by
No. 45/2018
s. 347(4).

Division 5—General duties of renters and residential rental providers

Pt 2 Div. 5
(Heading)
amended by
No. 45/2018
s. 45.

59 Renter must not use premises for illegal purposes

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

S. 59
(Heading)
inserted by
No. 45/2018
s. 348(1).

S. 59
amended by
No. 45/2018
s. 348(2).

60 Renter must not cause nuisance or interference

S. 60
(Heading)
inserted by
No. 45/2018
s. 348(3).

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

S. 60(1)
amended by
No. 45/2018
s. 348(4).

- (2) A renter 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

S. 60(2)
amended by
No. 45/2018
s. 348(4).

(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.

Note to s. 60
inserted by
No. 47/2019
s. 55.

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

S. 61
substituted by
No. 45/2018
s. 46.

61 Renter and visitor must not damage premises or common areas

(1) Subject to subsection (2), a renter and any visitor must not intentionally or negligently cause damage to—

(a) rented premises; and

(b) any common area in respect of the rented premises.

(2) For the purposes of subsection (1), *damage* does not include fair wear and tear caused by a renter or a visitor.

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

S. 62
substituted by
No. 45/2018
s. 47.

62 Renter must notify residential rental provider of damage

(1) Subject to subsection (2), a renter who becomes aware of damage to the rented premises, as soon as practicable, must give written notice to the residential rental provider of—

(a) the fact that the damage has occurred; and

(b) the nature of the damage.

(2) Written notice under subsection (1)—

- (a) may be given by electronic communication in accordance with the **Electronic Transactions (Victoria) Act 2000**; and
- (b) is not otherwise subject to the requirements of section 506.

63 Renter must keep and leave rented premises reasonably clean

S. 63
substituted by
No. 45/2018
s. 48.

- (1) A renter must keep the rented premises in a reasonably clean condition except to the extent that the residential rental provider is responsible under this Act for keeping the premises in that condition.
- (2) At the end of a residential rental agreement, the renter must leave the rented premises, as far as practicable—
 - (a) reasonably clean; and
 - (b) in the same condition as when the renter entered into possession of the premises, taking into account fair wear and tear to the premises.

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

63A Renter's safety-related duties

S. 63A
inserted by
No. 45/2018
s. 48.

- (1) A renter must not remove, deactivate or otherwise interfere with the operation of a prescribed safety device at rented premises unless it is reasonable in the circumstances to do so.
- (2) Subject to subsection (3), a renter must undertake any safety-related activities set out in the residential rental agreement if that agreement contains a term prescribed under section 27C(2).

- (3) Any activity referred to in subsection (2) must be carried out by a suitably qualified person.

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

S. 64
(Heading)
inserted by
No. 45/2018
s. 49(1).

64 Modifications to rented premises

S. 64(1)
substituted by
No. 45/2018
s. 49(2).

- (1) A renter may make any modifications to rented premises that are prescribed modifications without the residential rental provider's consent.

S. 64(1A)
inserted by
No. 45/2018
s. 49(2).

- (1A) A renter must not, without the residential rental provider's written consent—
- (a) install any fixtures on the rented premises; or
 - (b) make any alteration, renovation or addition to the rented premises that are not prescribed modifications under subsection (1).

S. 64(1B)
inserted by
No. 45/2018
s. 49(2).

- (1B) A residential rental provider must not unreasonably refuse consent to modifications made by the renter—
- (a) that do not penetrate or permanently modify—
 - (i) surfaces; or
 - (ii) fixtures; or
 - (iii) the structure of the property; or
 - (b) that are required for health and safety purposes; or
 - (c) that are—
 - (i) reasonable alterations within the meaning of section 55 of the **Equal Opportunity Act 2010**; and

- (ii) assessed and determined to be required modifications by an accredited occupational therapist or a prescribed practitioner; or
 - (d) that ensure access to telecommunications services; or
 - (e) that are reasonable security measures; or
 - (f) that are necessary to ensure the safety of a party to the existing residential rental agreement who—
 - (i) has been or is being subjected to family violence by another party to that agreement (including a protected person under a family violence safety notice, family violence intervention order or recognised non-local DVO); or
 - (ii) is a protected person under a personal safety intervention order made against another party to that agreement; or
 - (g) that are necessary to—
 - (i) increase the thermal comfort of the premises; or
 - (ii) reduce energy and water usage costs for the premises; or
 - (h) that are prescribed modifications for the purposes of this subsection.
- (1C) Without limiting a residential rental provider's right to refuse consent to a modification, the residential rental provider may refuse consent if—
- (a) a valid notice to vacate has been given to the renter in connection with an imminent change of possession, use or ownership of the rented premises; or

S. 64(1C)
inserted by
No. 45/2018
s. 49(2).

(b) the modification—

- (i) would significantly change the premises; or
- (ii) would require modifications to other premises or common areas; or

Note

Section 56 of the **Equal Opportunity Act 2010** applies to alterations to common property.

- (iii) would result in non-compliance with any other Act or law; or

Example

Non-compliance with the **Building Act 1993**.

- (iv) would result in additional maintenance costs for the residential rental provider if the rented premises were not restored at the end of the renter's occupation of premises; or

- (c) any action required to restore the rented premises to the condition the premises were in immediately before the modification is not reasonably practicable in the circumstances.

S. 64(1D)
inserted by
No. 45/2018
s. 49(2).

- (1D) Subsection (1C) does not apply to a modification referred to in subsection (1B)(c).

S. 64(1E)
inserted by
No. 45/2018
s. 49(2).

- (1E) A residential rental provider may require that any modification permitted under this section is to be completed by a suitably qualified person.

S. 64(2)
amended by
No. 45/2018
s. 49
(3)(a)(i)–(iii).

- (2) Before a residential rental agreement terminates, a renter who has installed fixtures on or renovated, altered or added to the rented premises (whether or not with the residential rental provider'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 residential rental provider an amount equal to the reasonable cost of restoring the premises to that condition. **S. 64(2)(b) amended by No. 45/2018 s. 49(3)(a)(iv).**
- (3) Subsection (2) does not apply if—
- (a) the residential rental agreement otherwise provides; or **S. 64(3)(a) amended by No. 45/2018 s. 49(3)(b)(i).**
- (b) the residential rental provider and the renter otherwise agree. **S. 64(3)(b) amended by No. 45/2018 s. 49(3)(b)(ii).**
- (4) For the purposes of subsection (2), a residential rental provider may require the renter to pay an additional amount of bond, unless— **S. 64(4) inserted by No. 45/2018 s. 49(4).**
- (a) the amount of bond is less than \$500; or
- (b) the amount of bond is not proportionate to the reasonable costs of restoring the premises to the condition the premises were in immediately before the modification; or
- (c) the residential rental provider and renter have agreed under subsection (3) that the renter is not required to restore the premises; or
- (d) the residential rental provider has agreed that the modification is funded by a scheme under a condition that the rented premises does not need to be restored.
- (5) Subject to subsection (6), a renter may apply to the Tribunal for determination of a claim that the residential rental provider has unreasonably refused consent under this section. **S. 64(5) inserted by No. 45/2018 s. 49(4).**
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S. 64(6)
inserted by
No. 45/2018
s. 49(4).

- (6) A renter must not apply to the Tribunal under subsection (5) if the renter has brought a dispute under Part 8 of the **Equal Opportunity Act 2010** in respect of a claim or facts which could form the basis of the application under subsection (5).

S. 64(7)
inserted by
No. 45/2018
s. 49(4).

- (7) The Tribunal must hear an application under subsection (5) within 5 days after the application is made.

Note to s. 64
inserted by
No. 45/2018
s. 49(4).

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

Pt 2 Div. 5A
(Heading)
inserted by
No. 45/2018
s. 50.

Division 5A—General duties of residential rental providers

S. 65
(Heading)
inserted by
No. 45/2018
s. 51(1).

65 Residential rental provider's duty in relation to provision of premises

S. 65(1)
substituted by
No. 45/2018
s. 51(2).

- (1) A residential rental provider must ensure that on the day that it is agreed the renter is to enter into occupation, the rented premises—

- (a) are vacant; and
- (b) are in a reasonably clean condition.

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

300 penalty units in the case of a body corporate.

S. 65(2)
amended by
No. 45/2018
s. 51(3).

- (2) A renter 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 renter is not required to pay rent for the rented premises in respect of the period beginning on the agreed day on which the renter is to enter into occupation of the premises and ending on the day on which the renter actually enters into occupation.

S. 65(3)
amended by
No. 45/2018
s. 51(3).

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

Note to s. 65
inserted by
No. 45/2018
s. 51(4).

65A Occupation of rented premises that do not comply with rental minimum standards

S. 65A
inserted by
No. 45/2018
s. 52.

- (1) Without limiting sections 65, 68 and 70, a residential rental provider must ensure that rented premises comply with prescribed rental minimum standards on or before the day on which the renter enters into occupation of the premises.

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

300 penalty units in the case of a body corporate.

- (2) If rented premises do not comply with the rental minimum standards on or immediately after the day on which the renter enters into occupation of the premises, the renter may issue a request to the residential rental provider for urgent repairs to be carried out to the premises to ensure that the premises comply with the standards.

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

66 Residential rental provider must give renter certain information

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

S. 66(1)
amended by
Nos 67/2010
s. 105, 45/2018
s. 53(2)(3).

- (1) The residential rental provider must on or before the occupation day give the renter a written statement in a form approved by the Director setting out in summary form the rights and duties of a residential rental provider and renter under a residential rental agreement.

Penalty: 60 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
Nos 67/2010
s. 105, 45/2018
s. 53
(5)(a)(b)(6).

- (2) If there is no agent acting for the residential rental provider, the residential rental provider must on or before the occupation day give the renter—

S. 66(2)(a)
amended by
No. 45/2018
s. 53(5)(c).

- (a) written notice of the residential rental provider'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.

S. 66(3)
amended by
Nos 67/2010
s. 105, 45/2018
s. 53(7)(8).

- (3) If there is an agent acting for the residential rental provider, the residential rental provider must on or before the occupation day give the renter—
- (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: 60 penalty units.

- (4) A residential rental provider must give the renter 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
Nos 67/2010
s. 105, 45/2018
s. 53(9)(10).

Penalty: 60 penalty units.

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

S. 66(5)
amended by
No. 45/2018
s. 53(11).

67 Quiet enjoyment

A residential rental provider must take all reasonable steps to ensure that the renter has quiet enjoyment of the rented premises during the residential rental agreement.

S. 67
amended by
No. 45/2018
s. 54(1).

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

Note to s. 67
inserted by
No. 45/2018
s. 54(2).

S. 68
(Heading)
inserted by
No. 45/2018
s. 55(1).

68 Residential rental provider's duty to maintain premises

S. 68(1)
substituted by
No. 45/2018
s. 55(2).

- (1) A residential rental provider must ensure that the rented premises are provided and maintained—
- (a) in good repair; and
 - (b) in a reasonably fit and suitable condition for occupation.

S. 68(1A)
inserted by
No. 45/2018
s. 55(2).

- (1A) Subsection (1) applies—
- (a) whether or not the renter was aware of any disrepair at the rented premises before entering into occupation of the premises; and
 - (b) despite the amount of rent paid by the renter; and
 - (c) despite the age and character of the rented premises.

S. 68(2)
amended by
No. 45/2018
s. 55(3)(a).

- (2) A residential rental provider is not in breach of the duty to maintain the rented premises in good repair if—

S. 68(2)(a)
amended by
No. 45/2018
s. 55(3)(b).

- (a) damage to the rented premises is caused by the renter's failure to ensure that care was taken to avoid damaging the premises; and

S. 68(2)(b)
amended by
No. 45/2018
s. 55(3)(a)(c).

- (b) the residential rental provider has given the renter a notice under section 78 requiring the renter to repair the damage.

S. 68(3)
inserted by
No. 45/2002
s. 16,
amended by
No. 45/2018
s. 55(4).

- (3) If a residential rental provider owns or controls rented premises and the common areas relating to those rented premises, the residential rental provider must take reasonable steps to ensure that the common areas are maintained in good repair.

- (4) The residential rental provider must ensure that any person who carries out any repairs or works to discharge the residential rental provider's duty under subsection (1) is a suitably qualified person.

S. 68(4)
inserted by
No. 45/2018
s. 55(5).

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

Note to s. 68
inserted by
No. 45/2018
s. 55(6).

68A Residential rental provider's duty to comply with safety-related repairs and maintenance requirements

S. 68A
inserted by
No. 45/2018
s. 56.

- (1) Subject to subsection (2), a residential rental provider must undertake any safety-related repairs and maintenance activities set out in the residential rental agreement if that agreement contains a term prescribed under section 27C(2).
- (2) Any maintenance or repairs required to be completed by a residential rental provider under subsection (1) must be carried out by a suitably qualified person.

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

68B Residential rental provider must keep and produce records of gas and electrical safety checks

S. 68B
inserted by
No. 45/2018
s. 56.

A residential rental provider must comply with any prescribed requirements for the keeping and production of records of gas and electrical safety checks conducted at the rented premises.

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

S. 69
(Heading)
inserted by
No. 32/2010
s. 79(1),
amended by
No. 45/2018
s. 57(1) (as
amended by
No. 47/2019
s. 65(1)).
S. 69
amended by
Nos 32/2010
s. 79(2),
45/2018
s. 57(2) (as
amended by
No. 47/2019
s. 65(2)).

69 Residential rental provider must ensure rating compliance for replacement appliances

A residential rental provider must ensure that if an appliance, fitting or fixture provided by the residential rental provider that uses or supplies water, electricity or gas at the rented premises needs to be replaced, the replacement has at least a rating that is of or above a prescribed level of rating in an efficiency rating system.

Note to s. 69
inserted by
No. 45/2018
s. 57(3).

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

70 Locks

S. 70(1)
substituted by
No. 45/2018
s. 58(1).

(1) A residential rental provider must ensure that all external doors able to be secured with a functioning deadlock at rented premises, other than any screen door attached to an external door, are secured with a functioning deadlock.

S. 70(1A)
inserted by
No. 45/2018
s. 58(1).

(1A) It is reasonable for a residential rental provider not to ensure an external door at rented premises is secured with a functioning deadlock if—

- (a) another Act or law provides for a different type of lock or device for the premises; or
- (b) the external door cannot be accessed because of another security barrier at the rented premises.

S. 70(1B)
inserted by
No. 45/2018
s. 58(1).

(1B) A residential rental provider must provide locks to secure all windows of the rented premises that are capable of having a lock.

- | | |
|---|---|
| (2) A party to a residential rental agreement who changes any external door or window lock must as soon as practicable give a key to the lock to the other party. | S. 70(2)
amended by
No. 45/2018
s. 58(2). |
| (3) A renter who wishes to change a lock in a master key system must obtain the residential rental provider's consent before changing that lock. | S. 70(3)
amended by
No. 45/2018
s. 58(3). |
| (4) A residential rental provider must not unreasonably withhold consent to the changing of the lock. | S. 70(4)
amended by
No. 45/2018
s. 58(4). |
| (5) In this section and sections 70A, 70B and 71—

<i>key</i> of a lock means a device or information normally used to operate the lock;

<i>lock</i> means a device for securing a door or window or other part of premises;

<i>master key system</i> 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. | S. 70(5)
amended by
Nos 52/2008
s. 258, 45/2018
s. 58(5). |

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

Note to s. 70
inserted by
No. 45/2018
s. 58(6).

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.

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

(1) This section applies if—

S. 70A(1)(a)
amended by
Nos 53/2010
s. 221(Sch.
item 9.4(a)),
53/2016
s. 117(1),
45/2018
s. 59(1)(a).

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

S. 70A(1)(b)
amended by
Nos 53/2010
s. 221(Sch.
item 9.4(a)),
53/2016
s. 117(1),
substituted by
No. 45/2018
s. 59(1)(b).

(b) a protected person under the notice or order—

(i) is also a party to the residential rental 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 residential rental agreement; and

S. 70A(1)(c)
inserted by
No. 45/2018
s. 59(1)(b).

(c) the Tribunal has not made an order made under section 91W(1)(b) in relation to the protected person.

S. 70A(2)
amended by
No. 45/2018
s. 59(2).

(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 residential rental agreement.

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

- | | |
|--|--|
| (a) give the residential rental provider or that person'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 recognised non-local 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 residential rental agreement, other than the excluded renter. | S. 70A(3)(a) amended by No. 45/2018 s. 59(3)(a)(i).

S. 70A(3)(a)(ii) amended by Nos 53/2010 s. 221(Sch. item 9.4(a)), 53/2016 s. 117(1), 45/2018 s. 59(3)(a)(ii).

S. 70A(3)(b) amended by No. 45/2018 s. 59(3)(b). |
| (4) The protected person is not required to give the excluded renter a key to the lock— | S. 70A(4) amended by No. 45/2018 s. 59(4)(a). |
| (a) in the case of a family violence intervention order, a recognised non-local DVO made by a court or a personal safety intervention order, unless the exclusion condition in the order ends; | 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), amended by No. 45/2018 s. 59(4)(b). |
| (b) in the case of a family violence safety notice or recognised non-local DVO made by a police officer, until the notice or DVO ends. | S. 70A(4)(b) substituted by No. 53/2016 s. 117(2)(b), amended by No. 45/2018 s. 59(4)(c). |
| (5) A residential rental provider or that person's agent must not give the excluded renter any key provided under subsection (3)(a) if he or she knows that the renter has been excluded from the rented premises under a family violence intervention order, family violence safety notice | S. 70A(5) amended by Nos 53/2010 s. 221(Sch. item 9.4(a)), 53/2016 s. 117(1), 45/2018 s. 59(5). |

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or recognised non-local DVO or a personal safety intervention order.

S. 70A(6)
amended by
No. 45/2018
s. 59(6).

- (6) If a certified extract or a copy of a notice or order has been given to a residential rental provider or that person's agent under subsection (3)(a)(ii), the residential rental provider and that person's agent are taken to know that the renter has been excluded from the rented premises.

S. 70A(7)
amended by
No. 45/2018
s. 59(7)(a).

- (7) A residential rental provider or that person'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—

S. 70A(7)(a)
amended by
No. 45/2018
s. 59(7)(b).

- (a) if given to the residential rental provider, that person's agent;

S. 70A(7)(b)
amended by
No. 45/2018
s. 59(7)(c).

- (b) if given to the residential rental provider's agent, the residential rental provider;

S. 70A(7)(c)
amended by
No. 45/2018
s. 59(7)(a).

- (c) in either case, the legal representative of the residential rental provider or that person's agent;

- (d) any other person as prescribed.

- (8) This section applies despite anything in section 70.

Note to s. 70A
inserted by
No. 45/2018
s. 59(8).

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

S. 70B
inserted by
No. 45/2018
s. 60 (as
amended by
No. 1/2021
s. 89).

70B Locks for rented premises the subject of an order under section 91W(1)(b) and (1A)(b)

- (1) If the Tribunal has made an order under section 91W(1)(b) or (1A)(b) terminating an existing residential rental agreement and requiring the residential rental provider to enter in a new

residential rental agreement with a specified person and other persons (if any), the specified person may change any external door or window lock of the rented premises, including a lock in a master key system.

- (2) As soon as practicable after the specified person changes any external door or window lock, the specified person must—
- (a) give the residential rental provider or that person's agent a key to the lock; and
 - (b) give a key to the lock to the other parties to the residential rental agreement (if any).
- (3) A residential rental provider or that person's agent must not give a key to the lock to a person who was a party to the existing residential rental agreement and who is not a party to the new residential rental agreement.

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

71 Application to Tribunal to change locks without consent

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|---|---|
| <p>(1) A renter may apply to the Tribunal for a determination that the consent of the residential rental provider to the changing of a lock is not required if—</p> <ul style="list-style-type: none">(a) the residential rental provider withholds consent; and(b) the renter believes that the withholding of the consent is unreasonable. | <p>S. 71(1)
amended by
No. 45/2018
s. 348(5).</p> <p>S. 71(1)(a)
amended by
No. 45/2018
s. 348(5)(b).</p> <p>S. 71(1)(b)
amended by
No. 45/2018
s. 348(5)(a).</p> |
|---|---|

S. 71(2)
amended by
No. 45/2018
s. 348(6).

- (2) If, after giving each party an opportunity to be heard, the Tribunal determines that consent is not required, the renter may change the lock without the residential rental provider's consent.

Pt 2 Div. 5B
(Heading and
ss 71A–71E)
inserted by
No. 47/2019
s. 47,
substituted by
No. 45/2018
s. 61 (as
amended by
No. 47/2019
s. 51).

Division 5B—Pets

S. 71A
substituted by
No. 45/2018
s. 61 (as
amended by
No. 47/2019
s. 51).

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

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

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

Note

A residential rental provider 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 residential rental provider makes an application to the Tribunal—see section 71C(2).

S. 71B
substituted by
No. 45/2018
s. 61 (as
amended by
No. 47/2019
s. 51).

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

- (1) A renter who requests the residential rental provider's consent to keep a pet on the rented premises must do so in the form approved by the Director.

- (2) A renter who makes a request under subsection (1) must give the request to the residential rental provider.

71C Residential rental provider must not unreasonably refuse to consent to keep a pet on rented premises

S. 71C
substituted by
No. 45/2018
s. 61 (as
amended by
No. 47/2019
s. 51).

- (1) A residential rental provider must not unreasonably refuse to consent to the renter keeping a pet on the rented premises.
- (2) The residential rental provider 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 residential rental provider 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
substituted by
No. 45/2018
s. 61 (as
amended by
No. 47/2019
s. 51).

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

71E Tribunal orders—pets

S. 71E
substituted by
No. 45/2018
s. 61 (as
amended by
No. 47/2019
s. 51).

- (1) On an application under section 71D, the Tribunal may make—
- (a) an order that the renter 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 renter 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

S. 72AA
inserted by
No. 45/2018
s. 62.

72AA Renter must report damage and breakdown of facilities to residential rental provider

A renter must give written notice to the residential rental provider as soon as practicable after becoming aware of—

- (a) damage to the rented premises; or
- (b) the breakdown of facilities, fixtures, furniture or equipment provided by the residential rental provider.

Note

Section 506(1)(da) provides that a document to be served on or given to a person under this Act may be served or given by electronic communication in accordance with the **Electronic Transactions (Victoria) Act 2000**.

72 Urgent repairs

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|--|--|
| (1) A renter may arrange for urgent repairs to be carried out to the rented premises if— | S. 72(1)
amended by
No. 45/2018
s. 63(1)(a). |
| (a) the renter has taken reasonable steps to arrange for the residential rental provider or that person's agent to immediately carry out the repairs; and | S. 72(1)(a)
amended by
No. 45/2018
s. 63(1)(a)(b). |
| (b) the renter is unable to get the residential rental provider or agent to carry out the repairs. | S. 72(1)(b)
amended by
No. 45/2018
s. 63(1)(a)(c). |
| (2) If the renter carries out repairs under subsection (1)— | S. 72(2)
amended by
No. 45/2018
s. 63(2)(a). |
| (a) the renter must give the residential rental provider 7 days written notice of the repairs carried out and the cost; and | S. 72(2)(a)
amended by
No. 45/2018
s. 63(2)(a)(b). |
| (b) the residential rental provider is liable to reimburse the renter for the reasonable cost of the repairs 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; and | S. 72(2)(b)
amended by
Nos 67/2010
s. 167(1),
45/2018
s. 63(2)(a)(c). |
| (c) the residential rental provider must reimburse the renter for the reasonable cost of repairs within 7 days after receiving written notice of— | S. 72(2)(c)
inserted by
No. 45/2018
s. 63(2)(d). |

- (i) the repairs; and
(ii) the cost of the repairs.
- S. 72(3)
substituted by
Nos 32/2010
s. 79(3),
45/2018
s. 63(3) (as
amended by
No. 47/2019
s. 66).
- (3) If urgent repairs are required to an appliance, fitting or fixture with a rating in a prescribed efficiency rating system, and the appliance, fitting or fixture cannot be repaired, the renter may replace it with an appliance, fitting or fixture with a rating that is of or above a prescribed level of rating in the efficiency rating system.
- S. 72(4)
amended by
No. 45/2018
s. 63(4).
- (4) This section does not apply to fixtures, furniture or equipment supplied by the renter.

73 Application to Tribunal for urgent repairs

- S. 73(1)
amended by
No. 45/2018
s. 64(1)(a)(b).
- (1) A renter may apply to the Tribunal for an order requiring the residential rental provider or that person's agent to carry out specified urgent repairs if—
- S. 73(1)(a)
amended by
No. 45/2018
s. 64(1)(a).
- (a) the renter cannot meet the cost of the repairs;
or
- S. 73(1)(b)
amended by
Nos 67/2010
s. 167(2),
45/2018
s. 64(1)(c).
- (b) the repairs cost more than the prescribed amount (which includes any amount in respect of any GST payable on the supply to which the urgent repairs relate); or
- S. 73(1)(c)
amended by
No. 45/2018
s. 64(1)(a)(d).
- (c) the residential rental provider refuses to pay the cost of the urgent repairs if carried out by the renter.
- (2) The Tribunal must hear an application under subsection (1) within 2 business days after the application is made.
- S. 73(3)
inserted by
No. 45/2018
s. 64(2).
- (3) Without limiting the matters to which the Tribunal may consider in determining an application under this section, the Tribunal must consider the Director's guidelines.

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

- (1) A renter may apply to the Director to investigate whether the residential rental provider is in breach of a duty to ensure that the premises are maintained in good repair if—
- S. 74(1)
amended by
No. 45/2018
s. 65(1).
- (a) the renter has given the residential rental provider written notice advising the residential rental provider that repairs (other than urgent repairs) are required to the rented premises; and
- S. 74(1)(a)
amended by
No. 45/2018
s. 65(1).
- (b) the residential rental provider has not carried out the repairs within 14 days after being given the notice.
- S. 74(1)(b)
amended by
No. 45/2018
s. 65(1)(b).
- (2) An application under subsection (1) and a report under subsection (3)—
- S. 74(2)
substituted by
No. 45/2018
s. 65(2).
- (a) must be in writing; and
- (b) may be made or issued, as the case requires, by electronic communication in accordance with the **Electronic Transactions (Victoria) Act 2000**.
- (3) On an application under subsection (1), the Director—
- (a) may investigate; and
- S. 74(3)(a)
amended by
No. 45/2018
s. 65(3)(a).
- (b) may negotiate arrangements for the carrying out of repairs if the Director is satisfied that the residential rental provider is in breach of the duty to maintain the rented premises in good repair; and
- S. 74(3)(b)
amended by
No. 45/2018
s. 65(3)(b).

S. 74(3)(c)
substituted by
No. 45/2018
s. 65(3)(c).

- (c) may issue a report that—
 - (i) states the duty to maintain the rented premises in good repair and in a reasonably fit and suitable condition for occupation has been breached; and
 - (ii) directs the residential rental provider to do any thing in order to comply with the duty to maintain the rented premises in good repair and in a reasonably fit and suitable condition for occupation.

S. 75
amended by
Nos 52/1998
s. 236(b)(c),
45/2002 s. 17,
substituted by
No. 45/2018
s. 66.

75 Application to Tribunal for non-urgent repairs

- (1) A renter may apply to the Tribunal for an order requiring the residential rental provider—
 - (a) to carry out specified non-urgent repairs if—
 - (i) the renter has given the residential rental provider written notice under section 74(1)(a); and
 - (ii) the residential rental provider has not carried out the repairs within 14 days after receiving the notice; or
 - (b) to comply with a report issued by the Director under section 74.
- (2) A renter must not apply to the Tribunal under subsection (1)(b) before the Director has issued the report under section 74.
- (3) The Tribunal must hear an application under subsection (1) within 7 days after the application is made.
- (4) Without limiting the matters to which the Tribunal may have regard in determining an application under subsection (1), the Tribunal must have regard to the following—

- (a) whether the repairs are needed because of—
 - (i) an act or omission of the renter; or
 - (ii) non-compliance by the renter with a provision of the residential rental agreement or the renter's duty not to damage the rented premises under section 61;
 - (b) whether the residential rental provider or that person's agent—
 - (i) was notified of the repairs; and
 - (ii) was given a reasonable opportunity to carry out the repairs;
 - (c) whether the renter has provided documentary evidence of the repair.
- (5) A renter must not apply to the Tribunal for a compliance order under section 212 for a breach of a duty that is the subject of an application under this section if that application has been determined by the Tribunal.

75A Residential rental provider may join owners corporation in application for breach of duty to maintain premises

S. 75A
inserted by
No. 45/2018
s. 67.

- (1) In an application to the Tribunal for a breach of the duty to maintain rented premises in good repair that contains a ground in respect of damage or defects to common property that adjoins the premises, the residential rental provider may join the owners corporation responsible for the common property as a party to the application.
- (2) If the application referred to in subsection (1) requires determination of a related matter under the **Owners Corporations Act 2006**, the Tribunal may hear and determine that related matter concurrently with the application.

76 What can the Tribunal order?

S. 76(1)
substituted by
No. 45/2018
s. 68(1).

- (1) If the Tribunal is satisfied that the residential rental provider is in breach of the duty to maintain the rented premises in good repair, the Tribunal may make an order that requires—
 - (a) the residential rental provider to carry out specified repairs; and
 - (b) the use of a suitably qualified person to carry out the repairs; and
 - (c) compensation to be paid in accordance with section 212(2).

S. 76(2)
amended by
No. 45/2018
s. 68(2).

- (2) If the Tribunal makes an order requiring the residential rental provider to carry out specified repairs, the order must specify the repairs and the time within which they must be carried out.

77 Payment of rent into Rent Special Account

S. 77(1)
amended by
No. 45/2018
s. 69(1).

- (1) If the renter has given notice requiring repairs to be carried out to the rented premises, the renter may apply to the Tribunal for an order authorising the renter to pay the rent under the residential rental agreement into the Rent Special Account.

S. 77(2)
amended by
No. 45/2018
s. 69(2)(a)(b).

- (2) The Tribunal must make an order authorising the renter to pay the rent into the Rent Special Account for a period specified by the Tribunal if it is satisfied that—

S. 77(2)(a)
substituted by
No. 45/2018
s. 69(2)(c).

- (a) a notice referred to in subsection (1) has been given to the residential rental provider; and

S. 77(2)(b)
amended by
No. 45/2018
s. 69(2)(d).

- (b) the residential rental provider has failed to comply with the duty to carry out the repairs; and

S. 77(2)(c)
inserted by
No. 45/2018
s. 69(2)(e).

- (c) the residential rental provider has not demonstrated that the residential rental provider—

- (i) is experiencing financial hardship; or
 - (ii) would experience financial hardship if the rent was paid into the Rent Special Account.
- (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 residential rental provider; and S. 77(3)(a)
amended by
No. 45/2018
s. 69(3)(a).
 - (b) on application by the residential rental provider, the Tribunal may order that the whole or such part of the rent as it may determine be paid to the residential rental provider before the end of that period, if it is satisfied that the residential rental provider has fulfilled or is fulfilling the residential rental provider's duty to carry out repairs to the premises; and S. 77(3)(b)
amended by
No. 45/2018
s. 69(3)(b).
 - (c) the whole or any part of the rent may be paid to the residential rental provider before the end of that period, if the residential rental provider and the renter agree to early payment. S. 77(3)(c)
inserted by
No. 45/2018
s. 69(3)(c).
- (4) A renter may apply to the Tribunal to order that the whole or any part of the rent paid into the Rent Special Account be paid to the renter if— S. 77(4)
inserted by
No. 45/2018
s. 69(4).
 - (a) the Tribunal has made an order under subsection (2) that rent be paid into the Rent Special Account in respect of a breach of section 68 or the rental minimum standards; and
 - (b) the residential rental provider has not effected any required repairs at the rented premises by the end of the period stated in that order.

S. 77(5)
inserted by
No. 45/2018
s. 69(4).

- (5) In determining whether a residential rental provider has demonstrated that the residential rental provider has experienced or would experience financial hardship for the purposes of subsection (2), the Tribunal may have regard to any of the following—
- (a) an eviction notice given to the residential rental provider;
 - (b) a disconnection notice in respect of a service or utility account held by the residential rental provider;
 - (c) a notice of legal proceedings issued against the residential rental provider;
 - (d) a letter from a non-profit organisation about the residential rental provider's loss of employment or financial hardship;
 - (e) a notice from a lender to the residential rental provider, including—
 - (i) an overdraft call; or
 - (ii) a repossession notice in respect of a mortgaged property;
 - (f) outstanding medical bills of the residential rental provider;
 - (g) a letter from a doctor in respect of the impact of the residential rental provider's illness or carer's responsibility on the ability of the residential rental provider to earn an income;
 - (h) a final notice from a school to the residential rental provider in respect of the payment of mandatory schooling fees;
 - (i) funeral expenses payable by the residential rental provider;

- (j) a repossession notice served on the residential rental provider in respect of an essential item;
- (k) a hardship variation, or a written request to vary the terms of an existing loan held by the residential rental provider;
- (l) any other prescribed document.

78 Residential rental provider may give renter repair notice

S. 78
(Heading)
inserted by
No. 45/2018
s. 70(1).

- (1) A residential rental provider may give a repair notice to a renter if—
 - (a) damage is caused to the rented premises because of a failure of the renter to comply with section 61(1); and
 - (b) the residential rental provider has not given a breach of duty notice in respect of that damage.
- (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 renter to ensure that care was taken to avoid damaging the premises; and
 - (c) if the residential rental provider wishes the renter to repair the damage—
 - (i) that the residential rental provider requires the renter to repair the damage at the renter's expense within 14 days after the giving of notice by the residential rental provider; and

S. 78(1)
substituted by
No. 45/2018
s. 70(2).

S. 78(2)(b)
amended by
No. 45/2018
s. 70(3)(a).

S. 78(2)(c)
amended by
No. 45/2018
s. 70(3)(b)(i)(ii).

S. 78(2)(c)(i)
amended by
No. 45/2018
s. 70(3)(b).

S. 78(2)(c)(ii)
amended by
No. 45/2018
s. 70(3)(b).

- (ii) that if the renter has not repaired the damage in a tradesman-like manner within that period, the residential rental provider may repair the damage at the renter's expense; and

S. 78(2)(d)
amended by
No. 45/2018
s. 70(3)(c).

- (d) if the residential rental provider wishes to repair the damage, that the residential rental provider is undertaking the repairs and the renter is liable for the reasonable cost of the repairs.

S. 78(3)
inserted by
No. 45/2018
s. 70(4).

- (3) If a repair notice is not complied with, the residential rental provider may apply to the Tribunal for an order under section 212.

S. 79
(Heading)
inserted by
No. 45/2018
s. 71(1).

79 Residential rental provider may do repairs and renter liable for costs

S. 79(1)
amended by
No. 45/2018
s. 71(2).

- (1) If the residential rental provider gives the renter a repair notice under section 78 requiring the renter to repair damage and the renter has not repaired the damage in a proper and tradesman-like manner within 14 days after the giving of notice, the residential rental provider may repair the damage at the renter's expense.

S. 79(2)
amended by
No. 45/2018
s. 71(3).

- (2) If the residential rental provider gives the renter a repair notice under section 78 stating that the residential rental provider is undertaking the repairs, the residential rental provider may repair the damage at the renter's expense as soon as practicable after giving the renter the notice.

S. 79(3)
amended by
No. 45/2018
s. 71(4).

- (3) The renter is liable to the residential rental provider for the reasonable costs of repairs undertaken by the residential rental provider under this section if the residential rental provider gives the renter particulars in writing of the cost of the repairs.

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| (4) The renter must reimburse the residential rental provider for any reasonable costs of repairs for which the renter is liable under subsection (3) within 14 days after the repairs are completed. | S. 79(4)
inserted by
No. 45/2018
s. 71(5) (as
amended by
No. 1/2021
s. 90(1)). |
| (5) A renter may apply to the Tribunal for an extension of the 14 day period referred to in subsection (4) if—

(a) the renter is unable to reimburse the residential rental provider within 14 days after the repairs are completed; and

(b) the residential rental provider does not agree to a period to provide reimbursement that is longer than the 14 day period referred to in subsection (4). | S. 79(5)
inserted by
No. 45/2018
s. 71(5) (as
amended by
No. 1/2021
s. 90(1)). |
| (6) Despite subsection (4), if the renter is experiencing hardship, the renter may give written notice to the residential rental provider that the renter requires an additional 14 days to reimburse the residential rental provider. | S. 79(6)
inserted by
No. 45/2018
s. 71(5) (as
amended by
No. 1/2021
s. 90(1)). |
| (7) A renter who gives notice under subsection (6) must provide proof of hardship upon request by the residential rental provider. | S. 79(7)
inserted by
No. 45/2018
s. 71(5) (as
amended by
No. 1/2021
s. 90(1)). |

80 Declaration under Housing Act 1983 that house unfit for habitation

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|---|---|
| (1) A residential rental provider 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. | S. 80(1)
amended by
No. 45/2018
s. 349(1). |
| (2) A renter 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). | S. 80(2)
amended by
No. 45/2018
s. 349(2). |

Division 7—Assignment and sub-letting

81 Assignment and sub-letting by a renter

S. 81
(Heading)
inserted by
No. 45/2018
s. 72(1).

S. 81(1)
amended by
No. 45/2018
s. 72(2).

- (1) A renter under a residential rental agreement must not assign or sub-let the whole or any part of the rented premises without the residential rental provider's written consent.

S. 81(2)
amended by
No. 45/2018
s. 72(3).

- (2) A residential rental provider must not unreasonably withhold consent to the assignment or sub-letting of the whole or any part of the rented premises.

S. 81(2A)
inserted by
No. 45/2018
s. 72(4).

- (2A) For the purposes of subsection (2), it is unreasonable to withhold consent on the basis of an attribute set out in section 6 the **Equal Opportunity Act 2010**.

Note

Section 210AA provides that a person may apply to the Tribunal for an order for compensation if the person has suffered loss as a result of discrimination by the residential rental provider or that person's agent in contravention of this section.

S. 81(3)
amended by
No. 45/2018
s. 72(5).

- (3) An assignment or sub-letting of the whole or any part of the rented premises without the residential rental provider'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,
amended by
No 45/2018
s. 386.

Note

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

82 Renter may apply to Tribunal

S. 82
(Heading)
inserted by
No. 45/2018
s. 350(1).

- (1) A renter may apply to the Tribunal for a determination that the consent of the residential rental provider to the assignment or sub-letting of the whole or any part of the rented premises is not required if—

S. 82(1)
amended by
No. 45/2018
s. 350(2).

- (a) the residential rental provider withholds consent; and

S. 82(1)(a)
amended by
No. 45/2018
s. 350(2)(b).

- (b) the renter believes that the withholding of the consent is unreasonable.

S. 82(1)(b)
amended by
No. 45/2018
s. 350(2)(a).

- (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 residential rental provider's consent.

S. 82(2)
amended by
No. 45/2018
s. 350(3).

83 Director of Housing may withhold consent in certain circumstances

S. 83
amended by
No. 45/2018
s. 350(4).

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

- (a) the residential rental provider is the Director of Housing; and

S. 83(a)
amended by
No. 45/2018
s. 350(4).

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

S. 84
(Heading)
inserted by
No. 45/2018
s. 73(1).

84 Residential rental provider cannot ask for fee for giving consent

S. 84(1)
amended by
Nos 67/2010
s. 106, 45/2018
s. 73(2)(a)(3).

(1) A residential rental provider must not—

S. 84(1)(b)
amended by
No. 45/2018
s. 73(2)(b).

- (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 renter has refused to pay a fee or amount for the consent.

Penalty: 60 penalty units.

S. 84(2)
amended by
No. 45/2018
s. 73(4).

(2) If the renter has paid the residential rental provider a fee or amount for the consent to an assignment or sub-letting, the renter may apply to the Tribunal for an order that the residential rental provider refund to the renter the amount of the payment.

S. 84(3)
substituted by
No. 45/2018
s. 73(5).

(3) This section does not prevent a residential rental provider from requiring a renter to bear any reasonable expenses that are reasonably incurred by the residential rental provider because of the assignment of a residential rental agreement.

Division 8—Rights of entry

85 Entry of rented premises

S. 85
amended by
No. 45/2018
s. 74(a).

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

S. 85(a)
amended by
No. 45/2018
s. 74(b).

- (a) at any time agreed with the renter if the renter has consented within 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)—

S. 85(b)
substituted by
No. 45/2018
s. 74(c).

(i) for a purpose set out in section 86(1)(a) or (b), if at least 48 hours notice has been given to the renter in accordance with section 88; or

(ii) for a purpose set out in section 86(1)(ab), if at least 7 days notice has been given to the renter in accordance with section 88; or

(iii) for a purpose set out in section 86(1)(c), (e) or (g), if at least 24 hours notice has been given to the renter in accordance with section 88; or

(iv) for a purpose set out in section 86(1)(d) or (f), if at least 7 days notice has been given to the renter 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) subject to subsection (2), 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—

S. 86(1)(a)
substituted by
No. 45/2018
s. 75(1)(a).

(i) to show the premises to a prospective renter; or

(ii) to conduct an open inspection of the premises for prospective renters; or

(ab) to produce advertising images and videos in accordance with section 89A; or

S. 86(1)(ab)
inserted by
No. 45/2018
s. 75(1)(a).

Residential Tenancies Act 1997

No. 109 of 1997

Part 2—Residential tenancies—residential rental agreements

S. 86(1)(b)
substituted by
No. 45/2018
s. 75(1)(b).

(b) subject to subsection (2A), if the premises are to be sold or used as security for a loan and entry is required—

(i) to show the premises to a prospective buyer or lender; or

(ii) to conduct an open inspection of the premises for prospective buyers; or

S. 86(1)(c)
amended by
No. 45/2018
s. 75(1)(c).

(c) entry is required to enable the residential rental provider to carry out a duty under this Act, the residential rental agreement or any other Act; or

(d) entry is required for valuation purposes; or

S. 86(1)(e)
amended by
No. 45/2018
s. 75(1)(d).

(e) the residential rental provider or that person's agent has reasonable grounds to believe that the renter has failed to comply with his or her duties under this Act or the residential rental agreement; or

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

(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

S. 86(1)(g)
inserted by
No. 52/2008
s. 260(2),
amended by
Nos 1/2021
s. 83, 45/2018
s. 75(1)(e) (as
amended by
No. 1/2021
s. 90(2)).

(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 91V(1).

-
- (2) The following apply in respect of entry to rented premises for a purpose referred to in subsection (1)(a)—

S. 86(2)
substituted by
No. 45/2018
s. 75(2).

- (a) the right of entry may only be exercised—
- (i) in the period within 21 days before the termination date specified in the notice to vacate or notice of intention to vacate; and
 - (ii) up to twice a week, unless otherwise agreed with the renter; and
 - (iii) for a period of no longer than one hour, unless a longer period is agreed with the renter;
- (b) it is not unreasonable for a protected person residing at the premises to require that any inspections be by appointment.

- (2A) The following apply in respect of entry to rented premises for a purpose referred to in subsection (1)(b)—

S. 86(2A)
inserted by
No. 45/2018
s. 75(2).

- (a) the right of entry may only be exercised—
- (i) if the residential rental provider has given the renter notice of intention to sell in the form approved by the Director at least 14 days before entry is proposed; and
 - (ii) if the residential rental provider has made all reasonable efforts to agree with the renter on days and times for the property to be available for inspection; and
 - (iii) up to twice a week, unless otherwise agreed with the renter; and

(iv) for a period of no longer than one hour, unless a longer period is agreed with the renter;

(b) it is not unreasonable for a protected person residing at the premises to require that any inspections be by appointment;

(c) a renter at the premises is entitled to the prescribed compensation for sales inspections.

S. 86(2B)
inserted by
No. 45/2018
s. 75(2).

(2B) If a rental provider exercises a right of entry under subsection (1)(b), the rental provider must pay the renter the prescribed compensation for each sales inspection.

S. 86(3)
inserted by
No. 45/2002
s. 18,
amended by
No. 45/2018
s. 75(3).

(3) Despite subsection (1), in the case of the first residential rental agreement entered into between a residential rental provider and a renter 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.

S. 86(4)
inserted by
No. 52/2008
s. 260(3),
amended by
No. 45/2018
s. 75(4) (as
amended by
No. 47/2019
s. 67).

(4) For the purposes of an inspection under subsection (1)(g), the excluded renter may have a representative present at the inspection of the premises, but must provide the name and contact details of the representative to the residential rental provider or that person's agent before the inspection.

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 renter's consent.

S. 87(b)
amended by
No. 45/2018
s. 351(1).

88 What must be in a notice of entry?

A notice requiring entry must—

- (a) be in writing; and
- (b) state why the residential rental provider or that person's agent wishes to enter; and
- (c) be given—
 - (i) by post; or
 - (ii) by delivering it personally to the renter between the hours of 8 a.m. and 6 p.m.; and
- (d) if entry is pursuant to section 86(1)(g), and the residential rental provider has been given the name and contact details required under that paragraph, state the name of the excluded renter's representative (if any).

S. 88(b)
amended by
No. 45/2018
s. 351(2)(a).

S. 88(c)(ii)
amended by
Nos 52/2008
s. 261(1),
45/2018
s. 351(2)(b).

S. 88(d)
inserted by
No. 52/2008
s. 261(2),
amended by
No. 45/2018
s. 351(2)(c).

89 Renter has duty to permit entry

- (1) Subject to subsection (2), a renter has a duty to permit a person exercising a right of entry in accordance with this Division to enter the rented premises.
- (2) A renter may apply to the Tribunal for an order specifying or limiting when entry to the premises may occur by—
 - (a) a residential rental provider or that person's agent; and
 - (b) an agent for the sale of the rented premises or other persons.

S. 89
substituted by
No. 45/2018
s. 76.

- (3) On an application under subsection (2), the Tribunal may make an order specifying or limiting the days, times and purposes for which entry to the rented premises is authorised for—
- (a) a residential rental provider or that person's agent; and
 - (b) an agent for the sale of the rented premises; and
 - (c) any other person specified in the order.

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

S. 89A
inserted by
No. 45/2018
s. 77.

89A Residential rental provider may enter rented premises to produce advertising images and videos

- (1) A residential rental provider or that person's agent may enter rented premises to produce advertising images and video of the property after providing notice under section 85(b)(ii).
- (2) The residential rental provider or that person's agent must make a reasonable attempt to agree with the renter on a suitable time for entry to the rented premises for the purposes referred to in subsection (1).
- (3) The renter, by written notice, may object to the production or taking of advertising images or video under subsection (1) if the image or video—
 - (a) shows a possession of the renter that—
 - (i) directly identifies the renter or another occupant; or
 - (ii) reveals sensitive information about the renter or another person who resides at the premises; or

- (iii) is valuable and would increase the risk of theft at the premises; or
 - (iv) would be unreasonable to expect the renter to remove or conceal; or
 - (b) may identify a person residing at the premises who is at risk of family violence or personal violence.
- (4) If the renter has requested that identifiable or high-value possessions are to be excluded from images or video produced under this section, the renter may make a request to the residential rental provider, or that person's agent, for the renter to review the images or video before the images or video are advertised.
- (5) A residential rental provider or that person's agent must not advertise the images or video referred to in subsection (4) before the renter has—
 - (a) reviewed the images or video; and
 - (b) given written consent to the residential rental provider, or that person's agent, for the images or video to be advertised.
- (6) A residential rental provider or that person's agent must not take or produce images or video referred to in subsection (3) if the renter has given written objection under subsection (3).
- (7) If the residential rental provider or that person's agent intends to use an advertising image or a video that displays a renter's possession more than 12 months after the image or video was produced, the residential rental provider, or that person's agent, must obtain written consent from the renter or former renter (as the case requires) before the residential rental provider, or that person's agent, uses the image or video for advertising.

- (8) If an image or a video was produced for a purpose other than advertising, the residential rental provider, or that person's agent, must obtain the renter's written consent before using the image or video for advertising purposes.

90 What if damage is caused during entry?

S. 90(1)
substituted by
No. 45/2018
s. 78(1).

- (1) A renter may apply to the Tribunal for an order for compensation if, when the residential rental provider exercises a right of entry under section 85, any person causes damage to or loss of the renter's goods on the rented premises.
- (2) If an application is made under subsection (1), the Tribunal—

S. 90(2)(a)
amended by
No. 45/2018
s. 78(2).

- (a) may make an order for payment of any compensation that it thinks fit if it is satisfied that damage was caused to the renter'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?

S. 91(1)
amended by
No. 45/2018
s. 351(3).

- (1) If the residential rental provider or that person's agent has exercised a right of entry and in doing so fails to comply with this Division, the renter may apply to the Tribunal for an order restraining the residential rental provider and that person'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—

S. 91(2)(a)
amended by
No. 45/2018
s. 351(4).

- (a) may make an order prohibiting the residential rental provider and that person'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 residential rental provider or that person's agent must not, without reasonable excuse, enter rented premises otherwise than in accordance with this Division.

Penalty: 60 penalty units.

S. 91A
inserted by
No. 45/2002
s. 19,
amended by
Nos 67/2010
s. 107, 45/2018
s. 79.

Division 9—Termination of residential rental agreements

Subdivision 1—When can a residential rental agreement be terminated?

Pt 2 Div. 9
(Headings
and ss 91B–
91ZZV)
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

91B Termination of residential rental agreement

Despite any Act or law to the contrary, a residential rental agreement does not terminate and must not be terminated except in accordance with this Division or Part 7 or 8.

S. 91B
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

91C Termination by agreement

A residential rental agreement may be terminated by agreement of the residential rental provider and the renter.

S. 91C
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

S. 91D
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

91D Termination by consent

- (1) A residential rental agreement terminates if the renter vacates the rented premises with the consent of the residential rental provider.
- (2) The consent, once given, is irrevocable.

S. 91E
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

91E Termination after notice to vacate

- (1) A residential rental agreement terminates if the residential rental provider or the renter gives a notice to vacate or a notice of intention to vacate the rented premises under this Division and—
 - (a) the renter vacates the rented premises on or after the termination date specified in the notice; or
 - (b) the residential rental agreement terminates in accordance with section 334.
- (2) If a notice to vacate under section 91ZZL or 91ZZM or a notice of intention to vacate under section 91Z(3) is given in respect of a fixed term residential rental agreement between a rooming house operator and a resident of the rooming house, unless it terminates earlier in accordance with this Division, the fixed term residential rental agreement terminates on whichever is the earlier of—
 - (a) the termination date specified in the notice to vacate under section 91ZZL or 91ZZM; or
 - (b) if a notice of intention to vacate has been given under section 91Z(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 91ZI or 91ZQ.

91F Termination by abandonment

A residential rental agreement terminates if the renter abandons the rented premises.

S. 91F
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

91G Termination where premises are sub-let

A residential rental agreement terminates if—

- (a) the renter is not in possession of the rented premises because the renter has sub-let them; and
- (b) the residential rental provider or the renter 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.

S. 91G
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

91H Termination where residential rental provider not owner of premises

A residential rental agreement terminates if the owner of the rented premises gives a notice to vacate in accordance with section 91ZZJ and—

- (a) the renter vacates the rented premises on or after the termination date specified in the notice; or
- (b) the residential rental agreement terminates in accordance with section 334.

S. 91H
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

91I Termination by mortgagee

A residential rental agreement terminates if a mortgagee in respect of rented premises gives a notice to vacate under section 91ZZK and—

S. 91I
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

- (a) the renter vacates the rented premises on or after the termination date specified in the notice; or
- (b) the residential rental agreement terminates in accordance with section 334.

S. 91J
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

91J Termination by merger

A residential rental agreement may terminate by merger (that is, where the interests of the residential rental provider and the renter become vested in one person).

S. 91K
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

91K Termination by disclaimer

A residential rental agreement may terminate by disclaimer (for example, on repudiation of the agreement by the renter accepted by the residential rental provider).

S. 91L
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

91L Termination by renter before possession

A residential rental agreement terminates if the renter has not entered into possession of the rented premises and has given a notice of termination of the residential rental agreement to the residential rental provider 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) do not meet any rental minimum standards;
or

- (g) are for any other reason unavailable for occupation.

91M Termination by residential rental provider before possession

A residential rental agreement terminates if the renter has not entered into possession of the rented premises and the residential rental provider has given a notice of termination of the residential rental agreement to the renter 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.

S. 91M
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

91N Termination after death of sole renter

- (1) If a renter dies, the residential rental agreement terminates at the earliest of the following dates—
- (a) the termination date specified in the notice of intention to vacate given under subsection (2); or
- (b) the termination date specified in the notice to vacate given under subsection (3); or
- (c) the termination date specified in the Tribunal order under subsection (5); or
- (d) a date agreed in writing between the residential rental provider and the legal personal representative or next of kin of the deceased renter.
- (2) The legal personal representative or next of kin of the deceased renter may give the residential rental provider a notice of intention to vacate the rented premises due to the death of the renter specifying a termination date, which, in the case of a fixed term residential rental agreement, may be a date before the end of that agreement.

S. 91N
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

- (3) The residential rental provider may give the legal personal representative or next of kin of the deceased renter a notice to vacate the rented premises due to the death of the renter specifying a termination date, which, in the case of a fixed term residential rental agreement, may be a date before the end of that agreement.
- (4) If a residential rental provider is unable to give notice to vacate under subsection (3) because the legal personal representative or next of kin of the deceased renter cannot be located, the residential rental provider may apply to the Tribunal for—
 - (a) an order to terminate the residential rental agreement; and
 - (b) if required, a possession order.
- (5) On an application under subsection (4), the Tribunal may—
 - (a) make an order terminating the residential rental agreement; and
 - (b) make a possession order under Part 7.
- (6) Nothing in this section prevents the legal personal representative or next of kin of a deceased renter giving vacant possession of the rented premises to the residential rental provider at any time before any termination date referred to in subsection (1).
- (7) The estate of a deceased renter is not liable for any rent for any period between the date vacant possession of the rented premises is given under subsection (6) and any termination date specified in a notice to vacate or notice of intention to vacate given under this section (as the case requires).
- (8) This section does not apply if there is more than one renter under the residential rental agreement.

91O Residential rental agreement—cancellation of licence or failure to renew licence

A residential rental 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**.

91P Offence to obtain possession etc. of premises

- (1) Except in accordance with this Act, a residential rental provider or a person acting on behalf of a residential rental provider must not require or compel or attempt to compel the renter under the residential rental agreement to vacate the rented premises.

Penalty: 150 penalty units in the case of a natural person;
750 penalty units in the case of a body corporate.

- (2) Except in accordance with this Act, a residential rental provider or a person acting on behalf of a residential rental provider must not obtain or attempt to obtain possession of the rented premises by entering them, whether the entry is peaceable or not, unless there are reasonable

S. 91O
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

S. 91P
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

grounds to believe that the renter has abandoned the premises.

Penalty: 150 penalty units in the case of a natural person;
750 penalty units in the case of a body corporate.

Subdivision 2—Variations or creations of residential rental agreements

S. 91Q
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

91Q Creation of periodic residential rental agreement

- (1) A renter is deemed to occupy rented premises under a periodic residential rental agreement if—
 - (a) the term of a fixed term residential rental agreement ends; and
 - (b) the renter under that agreement continues in occupation of the rented premises—
 - (i) otherwise than as a renter under a fixed term residential rental agreement; or
 - (ii) in the case of a fixed term residential rental agreement for more than 5 years, otherwise than in accordance with a term in the agreement permitting the extension of the term of that agreement at the end of the fixed term.
- (2) The rental period under the periodic residential rental agreement created by subsection (1) is—
 - (a) if the rental period under the fixed term residential rental agreement was more than one month, a monthly period; and
 - (b) if the rental period under the fixed term residential rental agreement was one month or less, a period equivalent to that rental period.

(3) Except as provided in subsection (2), the periodic residential rental agreement—

(a) in the case of a residential rental agreement for a fixed term not exceeding 5 years, is on the same terms, so far as applicable, as the terms of the fixed term residential rental agreement; and

(b) in the case of a residential rental agreement for a fixed term of more than 5 years, the periodic residential rental agreement is on the same terms, so far as applicable, as the terms of a standard form fixed term residential rental agreement not exceeding 5 years.

(4) On the application of the residential rental provider or the renter, the Tribunal may make any variations to the terms of a periodic residential rental agreement created under this section that are necessary for or appropriate to the continuation of the agreement.

91R New residential rental agreement created where head residential rental agreement terminated

(1) A person becomes the renter of the residential rental provider in respect of rented premises if—

(a) the person is in possession of the premises under a residential rental agreement (a *sub-residential rental agreement*) granted to that person by a person who is a renter of the premises under another residential rental agreement (the *head residential rental agreement*) granted to the person who is the head renter by the residential rental provider; and

(b) the head residential rental agreement terminates or is terminated; and

S. 91R
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

- (c) the sub-residential rental agreement does not terminate or is not terminated in accordance with this Act.
- (2) The residential rental agreement created under subsection (1) is deemed to be a residential rental agreement on the same terms, as far as applicable, as the terms of the sub-residential rental agreement.
- (3) Subsection (1) applies whether or not this Act applied at any time to the head residential rental agreement.

S. 91S
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

91S Application to Tribunal for creation of residential rental agreement

- (1) A person who has been residing in rented premises as that person's principal place of residence and who is not a party to a residential rental agreement applying to those premises may apply to the Tribunal for an order requiring the residential rental provider of the premises to enter into a residential rental agreement with the person if—
 - (a) an application for a possession order for the premises has been made under Part 7; or
 - (b) the renter has abandoned the rented premises; or
 - (c) the renter has delivered up vacant possession of the rented premises; or
 - (d) the renter has given a notice of intention to vacate the rented premises; or
 - (e) the renter has died and there is no surviving renter.
- (2) This section does not apply to a person who becomes a renter of a residential rental provider under section 91R.

91T Order of Tribunal to enter into residential rental agreement

S. 91T
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

- (1) The Tribunal may make an order requiring the residential rental provider to enter into a residential rental agreement with the applicant under section 91S if satisfied that—
 - (a) the applicant could reasonably be expected to comply with the duties of a renter under a residential rental agreement to which this Act applies; and
 - (b) the applicant would be likely to suffer severe hardship if the applicant were compelled to leave the premises; and
 - (c) the hardship suffered by the applicant would be greater than any hardship that the residential rental provider would suffer if the order were made.
- (2) The residential rental 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 residential rental agreement which applied in respect of the rented premises before the order is made, subject to any changes that the Tribunal determines.

91U Reduction or termination of fixed term residential rental agreement because of hardship

S. 91U
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

- (1) On the application of a party to a fixed term residential rental agreement, the Tribunal may—
 - (a) make an order—
 - (i) reducing the term of the agreement by a period stated in the order; and

- (ii) making any variations to the terms of the agreement that are necessary because of the reduction of the term; or
 - (b) make an order terminating the fixed term residential rental agreement.
- (2) The Tribunal may only make an order under this section if 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 or terminated would be greater than the hardship which the other party would suffer if the term were reduced or the agreement terminated.
- (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—
- (a) the reduction in the term of the residential rental agreement; or
 - (b) the termination of the fixed term residential rental agreement.

Subdivision 3—Termination and new residential rental agreements because of family violence or personal violence

S. 91V
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

91V Application for termination or new residential rental agreement because of family violence or personal violence

- (1) A person specified in subsection (2) may apply to the Tribunal for—
- (a) an order terminating the existing residential rental agreement; or

- (b) an order—
 - (i) terminating the existing residential rental agreement; and
 - (ii) requiring the residential rental provider of the premises to enter a residential rental agreement with the person and other persons (if any) specified in the application.
- (2) For the purposes of subsection (1), the following persons are specified—
 - (a) a party to the existing residential rental agreement—
 - (i) who has been or is being subjected to family violence by another party to the existing residential rental agreement; or
 - (ii) who is a protected person under a personal safety intervention order made against another party to the existing residential rental agreement;
 - (b) a person—
 - (i) who is residing in the rented premises as the person's principal place of residence; and
 - (ii) who is not a party to the existing residential rental agreement; and
 - (iii) who—
 - (A) has been or is being subjected to family violence by a party to the existing residential rental agreement; or

- (B) is a protected person under a personal safety intervention order made against a party to the existing residential rental agreement.
- (3) For the purposes of subsection (2), a reference to a person who has been or is being subjected to family violence includes a protected person under a family violence safety notice, family violence intervention order or recognised non-local DVO.
- (4) An application under subsection (1) may be made without the consent of the residential rental provider or any other party to the existing residential rental agreement.
- (5) If a person specified in subsection (2) is a child, an application under subsection (1) may be made on that child's behalf by a parent or guardian of the child who lives at the rented premises with the child.
- (6) 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 applicant or the person on whose behalf the application is made;
 - (b) the residential rental provider;
 - (c) any other party to the existing residential rental agreement;
 - (d) any other person specified in the application.
- (7) 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.

91W Tribunal orders

S. 91W
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

- (1) On an application under section 91V(1)(a), if satisfied as to the matters set out in subsection (1B), the Tribunal may make an order terminating the existing residential rental agreement.
- (1A) On an application under section 91V(1)(b), if satisfied as to the matters set out in subsection (2), the Tribunal may make an order—
 - (a) terminating the existing residential rental agreement; and
 - (b) requiring the residential rental provider to enter into a new residential rental agreement with the person and other persons (if any) referred to in the application.
- (1B) For the purposes of subsection (1), the matters are—
 - (a) the specified person or that person's dependent children would be likely to suffer severe hardship if the residential rental agreement were not terminated; and
 - (b) the hardship suffered by the specified persons would be greater than any hardship the residential rental provider would suffer if the order were made; and
 - (c) if a renter of the rented premises is excluded from the rented premises under a family violence safety notice, family violence intervention order, recognised non-local DVO or personal safety intervention order, it

is reasonable to do so given the length of the exclusion under the notice or order and the length of the existing residential rental agreement; and

- (d) it is reasonable to do so given the interests of any other renters (other than any excluded renter) under the existing residential rental agreement and, in particular, whether the other renters support the specified person's application.

(2) For the purposes of subsection (1A), the matters are—

- (a) the specified person and other persons (if any) could reasonably be expected to comply with the duties of a renter under a residential rental agreement to which this Act applies; and
- (b) the specified person or that person's dependent children would be likely to suffer severe hardship if the specified person were compelled to leave the premises; and
- (c) the hardship suffered by the specified person would be greater than any hardship the residential rental provider would suffer if the order were made; and
- (d) if a renter of the rented premises is excluded from the rented premises under a family violence safety notice, family violence intervention order, recognised non-local DVO or personal safety intervention order, it is reasonable to do so given the length of the exclusion under the notice or order and the length of the existing residential rental agreement; and

- (e) it is reasonable to do so given the interests of any other renters (other than any excluded renter) under the existing residential rental agreement and, in particular, whether the other renters support the specified person's application.
- (3) In determining an application under section 91V(1), the Tribunal must take into account the following matters in relation to family violence or personal violence—
 - (a) whether an application for a family violence safety notice, family violence intervention order, non-local DVO or personal safety intervention order has been made by or in respect of the specified person;
 - (b) if an application for a family violence safety notice, family violence intervention order, non-local DVO or personal safety intervention order has been made by or in respect of the person—
 - (i) whether there is a family violence safety notice, family violence intervention order, recognised non-local DVO or personal safety intervention order in effect; and
 - (ii) if there is a notice or an order in effect, whether a renter of the rented premises is excluded from the rented premises under the notice or order;
 - (c) any prescribed matters;
 - (d) any other matter the Tribunal considers relevant.

- (4) If the Tribunal makes an order under subsection (1A), the new residential rental agreement—
 - (a) is subject to the same rent and frequency of rent payments as the existing residential rental agreement; and
 - (b) if the existing residential rental agreement is a fixed term agreement, runs for a term not longer than the remainder of that fixed term; and
 - (c) otherwise, is on the same terms and conditions as the existing residential rental agreement, subject to any changes the Tribunal determines.
- (5) If the Tribunal makes an order under subsection (1), the Tribunal must specify the date on which the existing residential rental agreement terminates.
- (6) If the Tribunal makes an order under subsection (1A), the existing residential rental agreement is terminated on the signing of the new residential rental agreement.
- (7) If the Tribunal makes an order under subsection (1) or (1A), it may also make the following order—
 - (a) an order that the residential rental provider or that person's agent must ensure that the specified person has access to the rented premises or former rented premises to remove the person's goods;
 - (b) an order that the residential rental provider or that person's agent must not list information about the specified person on a residential tenancy database within the meaning of Part 10A.

(8) In this section—

specified person means a person specified
in section 91V(2).

**91X Tribunal may determine parties' liability under
terminated residential rental agreement**

S. 91X
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

- (1) If the Tribunal makes an order under section 91W(1) or (1A), the Tribunal may determine the liability of the person specified in section 91V(2) or any renter under the existing residential rental agreement in relation to—
- (a) a bond paid for the rented premises; and
 - (b) any existing liability under the existing agreement, including—
 - (i) liability relating to outstanding rent; and
 - (ii) liability relating to damage caused to the rented premises; and
 - (iii) liability relating to outstanding utility charges.
- (2) To remove doubt, the termination of a residential rental agreement under section 91W 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) The Tribunal may adjourn the hearing to allow an inspection of the rented premises in accordance with section 86(1)(g).

S. 91Y
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

91Y Cross-examination in a proceeding for termination or new residential rental agreement

- (1) Unless the Tribunal gives leave, in a proceeding on an application under section 91V(1)—
 - (a) a person subjected to family violence must not be personally cross-examined by the person who subjected that person to the family violence; and
 - (b) a protected person under a personal safety intervention order must not be personally cross-examined by the person against whom the personal safety intervention order was made.
- (2) For the purposes of subsection (1), a reference to a person subjected to family violence includes a protected person under a family violence safety notice, family violence intervention order or recognised non-local DVO.
- (3) The Tribunal may give leave under subsection (1) with or without conditions.
- (4) If leave is given under subsection (1), the person may only cross-examine the person subjected to family violence or the protected person—
 - (a) as to those matters set out in section 91W(2), in the case of an application under section 91V(1)(b); and
 - (b) as to those matters set out in section 91W(1B), in the case of an application under section 91V(1)(a); and
 - (c) in accordance with any conditions to which the leave given is subject.

Subdivision 3A—Termination of residential rental agreement because of coercion or deception of SDA resident

Pt 2 Div. 9
Subdiv. 3A
(Headings
and ss 91YA,
91YB)
inserted by
No. 45/2018
s. 79A (as
amended by
No. 32/2020
s. 12).

91YA Application for termination of residential rental agreement because of coercion or deception of SDA resident

S. 91YA
inserted by
No. 45/2018
s. 79A (as
amended by
No. 32/2020
s. 12).

- (1) An SDA resident who is a party to a residential rental 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 residential rental agreement;
 - (b) an order—
 - (i) terminating the existing residential rental agreement; and
 - (ii) requiring the SDA provider who is a residential rental provider to enter a new residential rental agreement with the person who is an SDA resident and other persons (if any) specified in the application;
 - (c) if all the renters under the existing residential rental agreement are SDA residents, an order—
 - (i) terminating the residential rental agreement; and
 - (ii) requiring the SDA provider who is a residential rental provider to enter into, or establish, an SDA residency agreement with each person who is a

renter under the existing residential
rental 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 residential rental agreement;
 - (b) the SDA resident did not receive an information statement as required under section 498D before entering into the residential rental 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 residential rental 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 residential rental 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), any other action that could otherwise be taken in respect of the existing residential rental agreement is stayed until the Tribunal determines the application.

91YB Tribunal orders

- (1) On an application under section 91YA(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 residential rental 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 residential rental agreement; or
 - (ii) order the termination of the existing residential rental agreement and that the SDA provider enter into a new residential rental agreement with the

S. 91YB
inserted by
No. 45/2018
s. 79A (as
amended by
No. 32/2020
s. 12).

SDA resident and other persons (if any) specified in the application; or

- (iii) if all renters to the agreement are SDA residents, order the termination of the existing residential rental 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 residential rental 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 renters party to the existing residential rental agreement; or
- (b) adjourn the application to allow the parties to the agreement to enter into a new residential rental 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 residential rental agreement are—
 - (i) unable to enter into a new residential rental agreement, direct the parties to enter into a new residential rental 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 renter and regardless of any loss or damage suffered by the SDA provider, the Tribunal may—
 - (a) order that any bond paid by the renter under the existing residential rental agreement be paid out by the Authority to the renter and, if there is more than one renter under the existing residential rental agreement, apportion the bond to be paid out by the Authority between the renters; and
 - (b) revoke any compensation orders that have been issued against the renter.
- (5) In determining an application under section 91YA(1), the Tribunal may take into account the Director's guidelines.

Subdivision 4—Notice or abandonment by renter

91Z Notice of intention to vacate

- (1) A renter may give a residential rental provider 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 fixed term residential rental agreement with a rooming house operator may give the rooming house operator a notice of intention to vacate if the resident has been given a notice to vacate under section 91ZZL or 91ZZM.

Note

See section 18.

S. 91Z
inserted by
No. 45/2018
s. 236 (as
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Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

- (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. 91ZA
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

91ZA Notice to have no effect in certain circumstances

- (1) A notice given under section 91Z in respect of a fixed term residential rental agreement is of no effect—
- (a) if the agreement includes a provision enabling the residential rental provider or the renter to end 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 ended; or
 - (b) in any other case, if it specifies a termination date that is earlier than the end of the term of the residential rental agreement.
- (2) This section does not apply to a notice of intention to vacate given under section 91Z(3).

S. 91ZB
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

91ZB Reduced period of notice of intention to vacate in certain circumstances

- (1) This section applies to a renter if—
- (a) the renter has been given a notice to vacate under section 91ZX, 91ZY, 91ZZ, 91ZZA, 91ZZB, 91ZZC, 91ZZD, 91ZZDA or 91ZZE; or

- (b) the renter requires special or personal care and needs to vacate the rented premises in order to obtain that care; or
 - (c) the renter has been offered and accepted accommodation by the Director of Housing or a registered housing agency; or
 - (d) the renter requires temporary crisis accommodation and needs to vacate the rented premises in order to obtain that accommodation; or
 - (e) the renter has been given a notice of intention to sell by the residential rental provider in accordance with section 86, unless the renter was notified of the proposed sale of the rented premises in accordance with section 30D before entering into the residential rental agreement; or
 - (f) the residential rental provider has refused the request of a renter with a disability to make reasonable alterations to the rented premises pursuant to section 55 of the **Equal Opportunity Act 2010**; or
 - (g) the renter, who is an SDA resident, has been given a notice under section 498DA.
- (2) A renter to whom this section applies may give a residential rental provider a notice of intention to vacate rented premises under a fixed term residential rental agreement specifying a termination date that is not less than 14 days after the date on which the notice is given, irrespective of the date of the end of the fixed term.

(3) A renter to whom this section applies may give a residential rental provider a notice of intention to vacate premises rented under a periodic residential rental agreement specifying a termination date that is not less than 14 days after the date on which the notice is given.

(3A) A renter to whom subsection (1)(g) applies may give a residential rental provider 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) A renter who gives a notice of intention to vacate under subsection (2) or (3) must provide with that notice of intention to vacate documentary evidence that substantiates the existence of special circumstances of a kind referred to in subsection (1)(b), (c) or (d), as the case requires.

(5) A renter who terminates a residential rental agreement under this section by notice of intention to vacate other than on receipt of a notice to vacate referred to in subsection (1)(a), is not liable to pay to the residential rental provider in relation to that termination any form of lease break fee (however described).

(6) 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.
- (7) This section applies despite anything to the contrary in section 91Z or 91ZA.

91ZC Residential rental agreement for a fixed term of more than 5 years does not comply with standard form

- (1) This section applies if a residential rental agreement for a fixed term of more than 5 years is not in the standard form.
- (2) Despite any term of the residential rental agreement to the contrary, the renter may give the residential rental provider a notice of intention to vacate the rented premises.
- (3) 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 is given.
- (4) A renter who terminates a residential rental agreement under this section is not liable to pay to the residential rental provider in relation to that termination any form of lease break fee (however described).

S. 91ZC
inserted by
No. 45/2018
s. 236 (as
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Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

91ZD Premises destroyed or unfit for habitation

- (1) A renter may give a residential rental provider a notice of intention to vacate rented premises if the premises—
 - (a) are unfit for human habitation; or

S. 91ZD
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

(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.

S. 91ZE
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

91ZE Failure of residential rental provider to comply with Tribunal order

(1) A renter may give a residential rental provider a notice of intention to vacate rented premises if the residential rental provider 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.

S. 91ZF
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

91ZF Successive breaches by residential rental provider

(1) A renter under a fixed term residential rental agreement may give a residential rental provider a notice of intention to vacate rented premises without first serving a breach of duty notice if—

- (a) the residential rental provider has breached a duty provision; and
- (b) on 2 previous occasions the residential rental provider has been in breach of the same provision; and
- (c) the renter has on each occasion referred to in paragraph (b) given a breach of duty notice to the residential rental provider.

(2) If the renter gives a breach of duty notice to the residential rental provider in respect of the breach of a duty provision, the renter must not give the residential rental provider a notice of intention to vacate under this section unless the residential rental provider has not complied with the breach of duty notice within the required time.

- (3) The notice must specify a termination date that is not less than 14 days after the date on which the notice is given.

91ZG Order of Tribunal that premises are abandoned

- (1) If a residential rental provider believes that a renter has abandoned rented premises, the residential rental provider may apply to the Tribunal for an order declaring that the renter 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 by order may declare that the rented premises were abandoned by the renter on a day specified by the Tribunal.
- (4) The renter is deemed to have abandoned the rented premises on that specified day.

S. 91ZG
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

91ZH Abandoned premises and rent in advance

- (1) If a renter abandons rented premises and the residential rental provider has received an amount of rent in respect of the premises that had not accrued due when the renter abandoned them, the residential rental provider 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 residential rental provider knows the address of the renter, the residential rental provider must pay to the renter the amount of rent to which the residential rental provider is not entitled.

S. 91ZH
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

- (3) If the residential rental provider does not know the address of the renter, the amount to which the residential rental provider is not entitled must be dealt with in accordance with Part 3 of the **Unclaimed Money Act 2008** as if the residential rental provider were a business to which that Part applies.

Subdivision 5—Notice by residential rental provider, owner or mortgagee

S. 91ZI
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

91ZI Damage

- (1) A residential rental provider may give a renter a notice to vacate rented premises if the renter or the renter's visitor, whether by act or omission intentionally or recklessly causes serious damage to the premises, including any safety equipment, or to any common areas.

Example

Safety equipment such as smoke alarms.

- (2) The notice may specify a termination date that is the date on which the notice is given or a later date.

S. 91ZJ
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

91ZJ Danger

- (1) A residential rental provider may give a renter a notice to vacate rented premises if the renter or the renter's visitor by act or omission endangers the safety of—
- (a) occupiers of neighbouring premises; or
 - (b) the residential rental provider or the provider's agent; or
 - (c) a contractor or employee of a person referred to in paragraph (b).

- (2) The notice may specify a termination date that is the date on which the notice is given or a later date.
- (3) A residential rental provider 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.

91ZK Threats and intimidation

- (1) A residential rental provider may give a renter a notice to vacate rented premises if the renter or any other person occupying or jointly occupying the rented premises has seriously threatened or intimidated—
 - (a) the residential rental provider or the provider's agent; or
 - (b) a contractor or employee of a person referred to in paragraph (a).
- (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. 91ZK
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

91ZL Condition of premises

- (1) A residential rental provider may give a renter 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.

S. 91ZL
inserted by
No. 45/2018
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amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

S. 91ZM
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

91ZM Non-payment of rent

- (1) On the first, second, third and fourth occasion of non-payment of rent—
 - (a) the residential rental provider may give a notice to vacate under this section to the renter; and
 - (b) if the renter pays the unpaid rent on or before the termination date in the notice under paragraph (a), the notice is of no effect; and
 - (c) if the renter does not pay the unpaid rent on or before the termination date in the notice under paragraph (a), the residential rental provider may apply to the Tribunal for a possession order; and
 - (d) on an application for a possession order, if the Tribunal has made an assessment under section 331 in respect of the application, the Tribunal—
 - (i) may place the renter on a payment plan and adjourn the application for the possession order; or
 - (ii) may make a possession order.
- (2) On the fifth occasion of non-payment of rent—
 - (a) the residential rental provider may give a notice to vacate under this section to the renter; and
 - (b) the notice given under paragraph (a) remains in effect despite the renter paying the unpaid rent on or before the termination date in the notice; and
 - (c) the residential rental provider may apply to the Tribunal for a possession order after the expiry of the notice under paragraph (a); and

- (d) section 331 does not apply to an application under paragraph (c); and
 - (e) on an application under paragraph (c), the Tribunal may make a possession order.
- (3) If the Tribunal places a renter on a payment plan under subsection (1)(d)(i) and the renter complies with the terms of the payment plan and has paid the unpaid rent—
- (a) the Tribunal is to dismiss the application for the possession order; and
 - (b) the residential rental agreement continues despite any notice to vacate that has already been given to the renter.
- (4) If the Tribunal places a renter on a payment plan under subsection (1)(d)(i) and the renter does not comply with the terms of the payment plan, the Tribunal may make a possession order.
- (5) A notice to vacate given under this section must specify a termination date that is not less than 14 days after the date on which the notice is given.
- (6) For the purposes of this section, a separate notice to vacate must be given for each separate occasion of non-payment of rent.
- (7) In this section—

occasion of non-payment of rent means an occasion where the renter owes at least 14 days rent within a 12 month period of the residential rental agreement, but does not include any amount owing under a payment plan ordered by the Tribunal;

12 month period means—

- (a) the first 12 month period of the residential rental agreement that begins on the first day of the residential rental agreement; or
 - (b) the second 12 month period of the residential rental agreement, if any, that begins on the day after the end of the first 12 month period of the residential rental agreement; or
 - (c) any consecutive 12 month period of the residential rental agreement, if any, that begins immediately after the end of the first or a subsequent 12 month period of the residential rental agreement.
- (8) For the purposes of this section, rent in relation to a residential rental agreement under which the Director of Housing or a registered agency is the residential rental provider, is the amount payable to the residential rental provider by the renter to occupy rented premises and use facilities or services less any applicable rental rebate.

S. 91ZN
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

91ZN Failure to pay bond

- (1) The residential rental provider may give the renter a notice to vacate rented premises if the renter fails to comply with a provision of the residential rental 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.

91ZO Failure to comply with Tribunal order

- (1) A residential rental provider may give a renter a notice to vacate rented premises if the renter 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.

S. 91ZO
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

91ZP Successive breaches by renter

- (1) A residential rental provider may give a renter a notice to vacate rented premises without first serving a breach of duty notice if—
 - (a) the renter has breached a duty provision; and
 - (b) on 2 previous occasions the renter has been in breach of the same provision; and
 - (c) the residential rental provider or the residential rental provider's agent has on each occasion referred to in paragraph (b) given a breach of duty notice to the renter.
- (2) If the residential rental provider gives a breach of duty notice to the renter in respect of the breach of a duty provision, the residential rental provider must not give the renter a notice to vacate under this section unless the renter has not complied with the breach of duty notice within the required time.
- (3) The notice must specify a termination date that is not less than 14 days after the date on which the notice is given.

S. 91ZP
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

S. 91ZQ
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

91ZQ Use of premises for illegal purpose

- (1) A residential rental provider may give a renter a notice to vacate rented premises if the renter 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. 91ZR
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

91ZR Drug-related conduct in public housing

- (1) The Director of Housing may give a renter a notice to vacate rented premises of which the Director of Housing is the residential rental provider if the renter 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
 - (e) intentionally caused another person to traffick in a drug of dependence by threatening to harm that person or another person or by using violence against that person or another person; or

- (f) 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
 - (g) 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—

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.

91ZS Prescribed indictable offences in public housing

- (1) The Director of Housing may give a renter a notice to vacate rented premises of which the Director of Housing is the residential rental provider if the renter has committed a prescribed indictable offence on the rented premises or in a common area.

S. 91ZS
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

- (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 renter a notice to vacate in respect of a prescribed indictable offence if the renter has been convicted or found guilty of that offence.

S. 91ZT
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

91ZT Permitting child to reside in premises

- (1) A residential rental provider may give a renter a notice to vacate rented premises if the renter has failed to comply with a term of the residential rental agreement prohibiting the renter 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.

S. 91ZU
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

91ZU False statement to housing authority

- (1) A residential rental provider which is a public statutory authority engaged in the provision of housing may give a renter a notice to vacate rented premises if the authority was induced to enter the residential rental agreement by a statement by the renter—
 - (a) which related to a matter on which eligibility to rent the premises depended; and
 - (b) which the renter 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.

91ZV Assignment or sub-letting without consent

- (1) A residential rental provider may give a renter a notice to vacate rented premises if the renter has assigned or sub-let or purported to assign or sub-let the whole or any part of the premises without the residential rental provider'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.

S. 91ZV
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

91ZW Residential rental provider's principal place of residence (fixed term residential rental agreement)

- (1) A residential rental provider under a fixed term residential rental agreement may, before the end of the term of the residential rental agreement, give the renter a notice to vacate rented premises if—
 - (a) the rented premises were the residential rental provider's principal place of residence—
 - (i) immediately before the residential rental agreement was entered into; or
 - (ii) if the residential rental agreement is the second residential rental agreement entered into since the premises were the residential rental provider's principal place of residence, immediately before the first residential rental agreement was entered into; and
 - (b) the residential rental agreement states that the rented premises were the residential rental provider's principal place of residence—
 - (i) immediately before the residential rental agreement was entered into; or

S. 91ZW
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

- (ii) if the residential rental agreement is the second residential rental agreement entered into since the premises were the residential rental provider's principal place of residence, immediately before the first residential rental agreement was entered into; and
 - (c) the residential rental agreement states that the residential rental provider 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 residential rental provider is not entitled to give a notice under this section if the residential rental provider has entered into more than 2 residential rental agreements in respect of the premises since the premises were the residential rental provider's principal place of residence.

Note

See section 91ZZO regarding requirements for accompanying documentary evidence.

S. 91ZX
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

91ZX Repairs

- (1) A residential rental provider may give a renter a notice to vacate rented premises if—
 - (a) the residential rental provider intends to repair, renovate or reconstruct the premises—
 - (i) in the case of a building owned by a residential rental provider containing 5 or more rented premises, immediately after the last renter vacates; or

- (ii) in any other case, immediately after the termination date; and
 - (b) the residential rental provider has obtained all necessary permits and consents to carry out the work; and
 - (c) the work cannot be properly carried out unless the renter 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.

Note

See section 91ZZO regarding requirements for accompanying documentary evidence.

91ZY Demolition

- (1) A residential rental provider may give a renter a notice to vacate rented premises if—
- (a) the residential rental provider intends to demolish the premises—
 - (i) in the case of a building owned by a residential rental provider containing 5 or more rented premises, immediately after the last renter vacates; or
 - (ii) in any other case, immediately after the termination date; and
 - (b) the residential rental provider 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.

Note

See section 91ZZO regarding requirements for accompanying documentary evidence.

S. 91ZY
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

S. 91ZZ
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

91ZZ Premises to be used for business

- (1) A residential rental provider may give a renter 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.

Note

See section 91ZZO regarding requirements for accompanying documentary evidence.

S. 91ZZA
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

91ZZA Premises to be occupied by residential rental provider or provider's family

- (1) A residential rental provider may give a renter a notice to vacate rented premises if the premises are immediately after the termination date to be occupied—
 - (a) by the residential rental provider; or
 - (b) in the case of a residential rental provider who is an individual—
 - (i) by the residential rental provider's partner, child, parent or partner's parent; or
 - (ii) by another person who normally lives with the residential rental provider and is wholly or substantially dependent on the residential rental provider.
- (2) The notice must specify a termination date that is not less than 60 days after the date on which the notice is given.

Note

See section 91ZZO regarding requirements for accompanying documentary evidence.

91ZZB Premises to be sold

- (1) A residential rental provider may give a renter 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 residential rental provider 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 residential rental provider, within 14 days after the last of those conditions is satisfied, may give a renter a notice to vacate the rented premises.
- (3) If a residential rental provider 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 residential rental provider, within 14 days after the contract of sale is entered into, may give a renter a notice to vacate the rented premises.
- (4) 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. 91ZZB
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

Note

See section 91ZZO regarding requirements for accompanying documentary evidence.

91ZZC Premises required for public purposes

- (1) A residential rental provider may give a renter a notice to vacate rented premises if—
 - (a) the premises are the property of a public statutory authority authorised to acquire land compulsorily for its purposes; and

S. 91ZZC
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

- (b) 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.

Note

See section 91ZZO regarding requirements for accompanying documentary evidence.

S. 91ZZD
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

91ZZD End of fixed term residential rental agreement of not more than 5 years

- (1) A residential rental provider under a fixed term residential rental agreement for a fixed term of not more than 5 years, before the end of the term of the residential rental agreement, may give the renter a notice to vacate the rented premises at the end of the initial fixed term.
- (2) The notice must specify a termination date that is on or after the date of the end of the initial fixed term.
- (3) The notice must be given—
 - (a) in the case of a fixed term residential rental agreement for 6 months or more (but not exceeding 5 years), not less than 90 days before the end of the initial fixed term; or
 - (b) in the case of a fixed term residential rental agreement for less than 6 months, not less than 60 days before the end of the initial fixed term.

S. 91ZZDA
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

91ZZDA End of fixed term residential rental agreement of more than 5 years

- (1) A residential rental provider under a fixed term residential rental agreement for a fixed term of more than 5 years, before the end of the term of the residential rental agreement, may give the

renter a notice to vacate the rented premises at the end of the initial fixed term.

- (2) The notice must specify a termination date that is on or after the date of the end of the initial fixed term.
- (3) The notice must be given—
 - (a) not less than the prescribed period before the end of the initial fixed term; or
 - (b) if no period has been prescribed under paragraph (a), 90 days before the end of the initial fixed term.
- (4) In this section—

initial fixed term includes any extension of the initial fixed term agreed to by the residential rental provider and the renter under the residential rental agreement.

91ZZE Renter no longer meets eligibility criteria

- (1) A residential rental provider which is a public statutory authority engaged in the provision of housing may give a renter 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 renter 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.

S. 91ZZE
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

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- (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. 91ZZF
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

91ZZF Renter in transitional housing refuses alternative accommodation

- (1) A residential rental provider which is the Director of Housing or a delegate of the Director of Housing may give a renter 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 renters of transitional housing to seek alternative accommodation; and
 - (c) the renter 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 renters of transitional housing to seek alternative accommodation.

91ZZG Notice to vacate when pet kept without consent

- (1) A residential rental provider may give a renter 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 renter 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.

S. 91ZZG
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

91ZZH Prohibition on letting premises after notice

- (1) A residential rental provider or a person acting on behalf of a residential rental provider who obtains possession of rented premises in respect of which a notice to vacate has been given under sections 91ZY to 91ZZB 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: 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—
 - (a) to the letting of the premises to a person referred to in section 91ZZA; or
 - (b) if the Tribunal determines that the premises may be let.

S. 91ZZH
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

S. 91ZZI
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

91ZZI Notice to have no effect in certain circumstances

- (1) A notice given under section 91ZX, 91ZY, 91ZZ, 91ZZA, 91ZZB, 91ZZC, 91ZZD, 91ZZDA or 91ZZE in respect of a fixed term residential rental agreement is of no effect—
 - (a) if the agreement includes a provision enabling the residential rental provider or the renter 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
 - (b) in any other case, if it specifies a termination date that is earlier than the end of the term of the residential rental agreement.
- (2) A notice given under section 91ZX, 91ZY, 91ZZ, 91ZZA, 91ZZB, 91ZZC, 91ZZD, 91ZZDA or 91ZZE is of no effect if the giving of the notice would constitute direct discrimination within the meaning of the **Equal Opportunity Act 2010**.
- (3) A notice under section 91ZK is of no effect if it was given in response to the exercise, or proposed exercise, by the renter of a right under this Act.
- (4) A notice under section 91ZZD or 91ZZDA is of no effect if it was given in response to—
 - (a) the exercise, or proposed exercise, by the renter of a right under this Act; or
 - (b) the renter making a report under section 72AA.

- (5) 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 91ZZD or 91ZZDA relating to a fixed term residential rental 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 91ZZD or 91ZZDA relating to a fixed term residential rental 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.

91ZZJ Notice by owner

- (1) If the residential rental provider under a residential rental agreement is not the owner of the rented premises, the owner may exercise a right of the residential rental provider—
 - (a) to give the renter a notice to vacate the premises (except under section 91ZW); or
 - (b) to recover possession of the premises; or
 - (c) to give a breach of duty notice that applies to the residential rental 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 residential rental provider's interest in the premises ends.
- (3) If the owner exercises a right conferred by subsection (1) in relation to a residential rental agreement, this Division, Part 5 and Part 7 have effect as if a reference to a residential rental

S. 91ZZJ
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

provider under a residential rental agreement included a reference to the owner.

S. 91ZZK
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

91ZZK Notice by mortgagee

- (1) Subject to subsection (4), if a mortgagee in respect of rented premises under a mortgage entered into before the residential rental 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 renter a notice to vacate 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.
- (3) If the mortgagee exercises a right conferred by subsection (1) in relation to a residential rental agreement, this Division, Part 5 and Part 7 have effect as if a reference to a residential rental provider under a residential rental agreement included a reference to the mortgagee.
- (4) A notice to vacate must not be given by a mortgagee if the mortgagee has expressly or impliedly consented to the mortgagor entering into a residential rental agreement in relation to the rented premises, regardless of when the residential rental agreement was entered into.

S. 91ZZL
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

91ZZL Notice to vacate given by Tribunal order under Rooming House Operators Act 2016

- (1) A residential rental provider who is a rooming house operator must give a resident who is a renter under a residential rental agreement a notice to vacate 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 operator.

- (2) The notice must specify a termination date that is the date specified by the Tribunal as the termination date.

91ZZM Notice to vacate—refusal of licence under Rooming House Operators Act 2016

S. 91ZZM
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

- (1) A rooming house operator who has entered into a residential rental agreement with a rooming house resident in accordance with section 94 may give the resident a notice to vacate under that residential rental agreement if—
- (a) the rooming house operator'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 operator'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.

Subdivision 6—Notices under this Division

91ZZN Form of notice of intention to vacate

S. 91ZZN
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

A notice of intention to vacate rented premises is not valid unless—

- (a) it is in writing; and
- (b) it is signed by the person giving the notice or by that person's agent.

S. 91ZZO
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

91ZZO Form of notice to vacate

A notice to vacate given under this Division is not valid unless—

- (a) it is in the relevant prescribed form; and
- (b) it is addressed to the renter; and
- (c) it is signed by the person giving the notice or by that person's agent; and
- (d) it specifies the reason or reasons for giving the notice; and
- (e) in the case of a notice to vacate given under section 91ZW, 91ZX, 91ZY, 91ZZ, 91ZZA, 91ZZB or 91ZZC, it is accompanied by documentary evidence, as approved by the Director from time to time, which supports the reason for giving the notice; and

Note

See section 486A.

- (f) it specifies the termination date which is the date by which compliance is required.

S. 91ZZP
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

91ZZP 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 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.

S. 91ZZQ
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

91ZZQ How can a notice be withdrawn?

- (1) A notice of intention to vacate or a notice to vacate given under this Division is withdrawn only if a notice of withdrawal is given.

- (2) 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.

Subdivision 7—Can a notice to vacate be challenged?

91ZZR Application of Subdivision

Nothing in this Subdivision affects any right a renter may have to challenge the validity of any other notice to vacate under this Act.

S. 91ZZR
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

91ZZS Renter may apply to Tribunal

- (1) On or before the hearing of an application for a possession order in respect of a notice to vacate given under section 91ZX, 91ZY, 91ZZ, 91ZZA, 91ZZB or 91ZZC, a renter 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.

S. 91ZZS
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

91ZZT What can the Tribunal order?

- (1) On an application under section 91ZZS, the Tribunal may determine whether or not the notice to vacate is valid.
- (2) If the Tribunal determines that the notice to vacate is valid, the renter is not entitled to further apply to the Tribunal to challenge the validity of the notice to vacate unless the Tribunal is satisfied that exceptional circumstances exist which justify

S. 91ZZT
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

reconsideration of the determination made under this section.

- (3) Nothing in subsection (2) affects the operation of section 479.

S. 91ZZU
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

91ZZU Renter may challenge notice to vacate on grounds of family violence or personal violence

- (1) On or before the hearing of an application for a possession order, a renter who has received a notice to vacate under section 91ZI, 91ZJ, 91ZK, 91ZO, 91ZP, 91ZQ or 91ZR may apply to the Tribunal challenging the validity of the notice to vacate on the grounds that the relevant act or breach for which the notice to vacate was given was caused by the act of a person who has subjected the applicant to family violence or personal violence.
- (2) An application under subsection (1) must be made within 30 days after the notice to vacate is given.

S. 91ZZV
inserted by
No. 45/2018
s. 236 (as
amended by
Nos 47/2019
s. 82, 32/2020
ss 10, 13,
1/2021 s. 94).

91ZZV What can the Tribunal order?

On an application under section 91ZZU, the Tribunal must make an order that the notice to vacate is invalid if satisfied that—

- (a) the applicant has been, or is being, subjected to family violence or personal violence; and
- (b) the relevant act or breach on which the notice to vacate was given was caused by the act of a person who has subjected the applicant to family violence or personal violence.

Part 3—Rooming houses—Residency rights and duties

Division 1—Residency rights

92 Residency right

- (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.
- (2) A residency right may be an exclusive occupancy right or a shared room right.
- (3) A residency right is an exclusive occupancy right unless—
- (a) the rooming house operator 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. 92
amended by
No. 63/2005
s. 5 (ILA
s. 39B(1)).

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

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

S. 92(3)(a)
amended by
No. 45/2018
s. 352(1).

92A Exclusive occupancy right

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

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

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

Example to
s. 92A
amended by
No. 45/2018
s. 352(2).

Example

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

S. 92B
inserted by
No. 63/2005
s. 6,
amended by
No. 45/2018
s. 352(3).

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 operator.

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.

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

92C Notice to resident of residency right

S. 92C(1)
amended by
Nos 67/2010
s. 108, 45/2018
s. 80(1)(2).

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

Penalty: 25 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

- (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 operator 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.

S. 92C(3)(c)
amended by
No. 45/2018
s. 80(3).

93 Rights cannot be assigned

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

93A Fixed term rooming house agreements

S. 93A
inserted by
No. 45/2018
s. 81.

- (1) A resident or a proposed resident and a rooming house operator may enter into an agreement (not being a residential rental agreement or an agreement under section 94(2)) for a fixed term specifying the terms and conditions of the resident's use and enjoyment of the rooming house.
- (2) A fixed term rooming house agreement must be—
 - (a) in writing; and
 - (b) in the prescribed form.

- (3) A term or condition in a fixed term rooming house agreement 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.

94 Power to enter agreements other than fixed term rooming house agreements

S. 94
(Heading)
inserted by
No. 45/2018
s. 82(1).

- (1) Despite this Part, a resident and rooming house operator may enter into a residential rental agreement in relation to a self-contained apartment for the purposes of section 18(1).

S. 94(1)
amended by
No. 40/2018
s. 11(1),
substituted by
No. 45/2018
s. 82(2).

S. 94(1A)
inserted by
No. 45/2002
s. 28,
repealed by
No. 45/2018
s. 82(3).

* * * *

S. 94(2)
amended by
No. 45/2018
s. 82(4).

- (2) A rooming house operator and a resident may enter an agreement (not being a residential rental 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.

S. 94(3A)
inserted by
No. 63/2005
s. 8,
repealed by
No. 45/2018
s. 82(5).

* * * *

- (3B) A rooming house operator and a resident cannot enter into a residential rental agreement for a fixed term of more than 5 years.

S. 94(3B)
inserted by
No. 40/2018
s. 11(2),
amended by
No. 45/2018
s. 82(6).

- (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) or a fixed term rooming house agreement.
- (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.

S. 94A(1)
amended by
No. 45/2018
s. 83.

94AB Additional terms for fixed term rooming house agreements

S. 94AB
inserted by
No. 45/2018
s. 84 (as
amended by
No. 1/2021
s. 91).

A fixed term rooming house agreement may include any other term or condition that is not inconsistent with this Act or the form prescribed under section 93A(2)(b).

Note

Section 94AC provides that certain additional terms are invalid.

S. 94ABA
inserted by
No. 45/2018
s. 84 (as
amended by
No. 1/2021
s. 91).

94ABA Offence to include prohibited term in fixed term rooming house agreement

- (1) A rooming house operator or resident must not prepare or authorise the preparation of a fixed term rooming house agreement that contains a term referred to in section 94AD.

Penalty: 25 penalty units.

- (2) If a fixed term rooming house agreement contains a prohibited term, that term is void and unenforceable.

S. 94AC
inserted by
No. 45/2018
s. 84 (as
amended by
No. 1/2021
s. 91).

94AC Invalid terms

A term or condition in a fixed term rooming house agreement (including a term agreed to by the parties under section 94AB) is invalid if—

- (a) it is a term that this Act provides must not be included in a fixed term rooming house agreement; or
- (b) it is a prohibited term.

Note

The Tribunal may declare under sections 94A and 472 that a term of a fixed term rooming house agreement is invalid.

S. 94AD
inserted by
No. 45/2018
s. 84 (as
amended by
No. 1/2021
s. 91).

94AD Prohibited terms—general

- (1) A fixed term rooming house agreement must not include any of the following terms—
 - (a) a term that requires the resident to take out any form of insurance;
 - (b) a term that exempts the rooming house operator from liability for an act of—
 - (i) the rooming house operator or that person's agent; or
 - (ii) a person acting on behalf of the rooming house operator or that person's agent;

- (c) a term that provides that if the resident contravenes the fixed term rooming house agreement, the resident is liable to pay—
 - (i) all or part of the remaining rent under the agreement; or
 - (ii) increased rent; or
 - (iii) a penalty; or
 - (iv) liquidated damages;
 - (d) a term that requires all or part of the room in the rooming house to be professionally cleaned at the end of the agreement, unless that term is contained in the form prescribed under section 93A(2)(b);
 - (e) a term that requires the resident to pay the cost of having all or part of the room in the rooming house professionally cleaned at the end of the agreement, unless that term is contained in the form prescribed under section 93A(2)(b);
 - (f) a term that provides that if the resident does not contravene the fixed term rooming house agreement—
 - (i) the rent is reduced; or
 - (ii) the rent may be reduced; or
 - (iii) the resident is to be paid a rebate or other benefit; or
 - (iv) the resident may be paid a rebate or other benefit;
 - (g) any other prescribed prohibited term.
- (2) A term in a fixed term rooming house agreement must not include a term that requires a party to the agreement to bear any fees, costs or charges

incurred by the other party in connection with the preparation of the agreement.

Note

Section 94AC provides that terms which must not be included in a fixed term rooming house agreement are invalid.

S. 94AE
inserted by
No. 45/2018
s. 84 (as
amended by
No. 1/2021
s. 91).

94AE Prescribed terms—professional cleaning

A fixed term rooming house agreement may include—

- (a) a term that requires the room in the rooming house to be professionally cleaned if professional cleaning is required to restore the room to the condition it was in immediately before the start of the agreement, taking into account fair wear and tear; or
- (b) a term that requires the resident to pay the cost of having all or part of the room in the rooming house professionally cleaned if professional cleaning is required to restore the room to the condition it was in immediately before the start of the agreement, taking into account fair wear and tear.

S. 94AF
inserted by
No. 45/2018
s. 84 (as
amended by
No. 1/2021
s. 91).

94AF Application to Tribunal to order preparation of fixed term rooming house agreement

- (1) A resident may apply to the Tribunal for an order requiring a rooming house operator to prepare and enter into a fixed term rooming house agreement.
- (2) The Tribunal may make an order requiring a rooming house operator to prepare and enter into a fixed term rooming house agreement if the Tribunal is satisfied that—
 - (a) the rooming house operator and resident are subject to an existing agreement that is not in writing or that is only partly in writing; and

- (b) the resident is continuing in occupation of the room in the rooming house after a previous fixed term rooming house agreement has ended.
- (3) The order may specify—
 - (a) subject to this Part, the terms of the fixed term rooming house agreement; and
 - (b) a commencement date for the fixed term rooming house agreement which may be a date that is before the date the order was made.

Division 1A—Shared room rights

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

94B Consent required for increase in room capacity

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

- (1) A rooming house operator must not increase the room capacity of a room that is occupied by one or more residents unless—
 - (a) the rooming house operator 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.

S. 94B(1)
amended by
Nos 67/2010
s. 109, 45/2018
s. 85.

S. 94B(1)(a)
amended by
No. 45/2018
s. 85(1).

Penalty: 150 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

S. 94C(1)
amended by
No. 45/2018
s. 353(1).

- (1) A notice given by a rooming house operator 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 operator 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 operator 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

S. 94C(1)(d)
amended by
No. 45/2018
s. 353(1).

S. 94C(1)(f)(ii)
amended by
No. 45/2018
s. 353(1).

- (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
- (l) 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 operator under section 94B ceases to have effect 14 days after it is given. S. 94C(2)
amended by
No. 45/2018
s. 353(2).
- (3) A notice given by a rooming house operator under section 94B is invalid if— S. 94C(3)
amended by
No. 45/2018
s. 353(2).
 - (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 operator 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.

S. 94D(3)
amended by
No. 45/2018
s. 353(3).

Division 1B—Discrimination in relation to residency rights

Pt 3 Div. 1B
(Headings
and ss 94E,
94F)
inserted by
No. 45/2018
s. 86 (as
amended by
No. 32/2020
s. 8).

94E Occupancy application forms must include prescribed information

S. 94E
inserted by
No. 45/2018
s. 86 (as
amended by
No. 32/2020
s. 8).

A rooming house operator or that person's agent must not provide a person with an application form to apply for occupancy of a room unless the application form includes a statement that contains the prescribed information.

94F Rooming house operator must not unlawfully discriminate against another person by refusing occupancy

S. 94F
inserted by
No. 45/2018
s. 86 (as
amended by
No. 32/2020
s. 8).

- (1) A rooming house operator must not contravene section 52 of the **Equal Opportunity Act 2010** by refusing a person occupancy of the room on the basis of an attribute set out in section 6 of that Act.
- (2) A rooming house operator must not instruct or permit that person's agent to refuse a person occupancy on the basis of an attribute set out in section 6 of the **Equal Opportunity Act 2010**.
- (3) It is not a contravention of this section for an entity specified in subsection (4)—
 - (a) to refuse a person occupancy of a room in a rooming house; or
 - (b) to carry out any other function referred to in that subsection.

- (4) For the purposes of subsection (3), the following are specified entities—
- (a) the Director of Housing or the Director of Housing's agent;
 - (b) a registered agency or the registered agency's agent;
 - (c) an authorised person (within the meaning of section 4(1) of the **Housing Act 1983**) who provides a room in a rooming house for a purpose referred to in section 142A(2)(a) of that Act;
 - (d) a person who provides a room in a rooming house in accordance with a determination made under section 142E of the **Housing Act 1983**;
 - (e) a person who provides a room in a rooming house as affordable housing within the meaning of section 3AA of the **Planning and Environment Act 1987**.
- (5) If the Director of Housing makes a determination under section 142E(1) of the **Housing Act 1983** that relates to an attribute of a person referred to in section 6 of the **Equal Opportunity Act 2010**, that determination is not a contravention of this section.

Note

Section 210AA provides that a person may apply to the Tribunal for an order for compensation if the person has suffered a loss as a result of discrimination by the rooming house operator or that person's agent in contravention of this section.

Division 1C—Disclosures and representations prior to granting residency rights

Pt 3 Div. 1C
(Headings
and ss 94G–
94I)
inserted by
No. 45/2018
s. 86 (as
amended by
No. 32/2020
s. 8).

94G Restriction on use of personal information provided by prospective residents

S. 94G
inserted by
No. 45/2018
s. 86 (as
amended by
No. 32/2020
s. 8).

A rooming house operator or that person's agent must not use personal information disclosed by a person on an application form to apply for a residency right unless the use is for—

- (a) the purposes of assessing the person's suitability as a resident; or
- (b) another purpose required by this Act.

94H Rooming house operator must not request prescribed information from applicants

S. 94H
inserted by
No. 45/2018
s. 86 (as
amended by
No. 32/2020
s. 8).

A rooming house operator or that person's agent must not request that a person who applies for a residency right is to disclose the prescribed information.

94I Information that rooming house operators must disclose before occupancy commences

S. 94I
inserted by
No. 45/2018
s. 86 (as
amended by
No. 32/2020
s. 8).

Before occupancy of a room commences, a rooming house operator must disclose the following information to the resident—

- (a) if the rooming house operator has engaged an agent to sell the rooming house or prepared a contract of sale, that there is a proposal to sell the rooming house;

- (b) if a mortgagee has commenced a proceeding to enforce a mortgage over the rooming house, that a mortgagee is taking action for possession of the rooming house;
- (c) if the rooming house operator is not the owner of the rooming house, that the rooming house operator has a right to permit occupancy of the room;
- (d) any other prescribed information in relation to the room.

Division 2—Bonds

S. 95
amended by
Nos 45/2002
s. 30, 45/2018
s. 354.

95 Payment of bond

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

S. 96
amended by
No. 67/2010
s. 110,
substituted by
No. 45/2018
s. 87.

96 What is the maximum bond?

A rooming house operator must not demand or accept a bond that exceeds—

- (a) in the case of a fixed term rooming house agreement, the equivalent of 28 days rent; or
- (b) in any other case, the equivalent of 14 days rent.

Penalty: 60 penalty units.

97 Condition report

S. 97(1)
amended by
Nos 45/2002
s. 31(1),
67/2010 s. 111,
substituted by
No. 45/2018
s. 88(1).

- (1) Before a resident or a proposed resident enters into occupation of the room as a resident, a rooming house operator must give the resident or proposed resident 2 copies of a condition report signed by or on behalf of the rooming house operator specifying the state of repair and general

condition of the room on the day specified in the report.

Penalty: 25 penalty units.

- (1A) For the purposes of subsection (1), a rooming house operator is deemed to give 2 copies of a condition report to the resident or proposed resident if the rooming house operator gives the resident or proposed resident an electronic copy of the condition report.

S. 97(1A),
inserted by
No. 45/2018
s. 88(1).

- (1B) A condition report must be in the prescribed form.

S. 97(1B),
inserted by
No. 45/2018
s. 88(1).

Note

Section 506(1)(da) provides that a document to be served on or given to a person under this Act may be served or given by electronic communication in accordance with the **Electronic Transactions (Victoria) Act 2000**.

- (2) Within 5 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 operator—

S. 97(2)
amended by
Nos 45/2002
s. 31(2),
45/2018
s. 88(2).

- (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.

- (3) A resident or a proposed resident who is not given a condition report within the period referred to in subsection (1) may complete a condition report and give it to the rooming house operator, or that person's agent, during the period between inspecting the room and 5 business days after entering into occupation of the room.

S. 97(3)
inserted by
No. 45/2018
s. 88(3).

- (4) A copy of the condition report that is completed under subsection (1) or (3) is to be retained by the rooming house operator and the resident.

S. 97(4)
inserted by
No. 45/2018
s. 88(3).

S. 97(5)
inserted by
No. 45/2018
s. 88(3).

- (5) Within 10 days after the end of an agreement under section 94 that grants a residency right, the rooming house operator, or that person's agent, must complete the copy of the condition report retained by the rooming house operator or the resident under this section—
- (a) in the presence of the other party; or
 - (b) in the absence of the other party, if the party has given the absent other party a reasonable opportunity to be present when the condition report is completed.

S. 97A
inserted by
No. 45/2018
s. 89.

97A Rooming house operator or resident may apply to Tribunal to amend inaccurate or incomplete condition report

- (1) Within 30 days after an agreement in respect of a residency right under this Part has commenced, the rooming house operator or resident may apply to the Tribunal to amend a statement in a condition report on the basis that the statement is inaccurate or incomplete.
- (2) On an application under subsection (1), the Tribunal may order—
- (a) that the condition report is to be amended in the manner specified in the order; or
 - (b) that the condition report is not required to be amended.
- (3) This section does not limit the operation of sections 18, 29, 30, 151 and 152 of the Australian Consumer Law (Victoria).

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 operator and the resident. **S. 98(1) amended by No. 45/2018 s. 90(1).**
- (1A) A condition report that is given to a rooming house operator is taken to be notice given to the rooming house operator of any defects or outstanding repairs stated in the report. **S. 98(1A) inserted by No. 45/2018 s. 90(2).**
- (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) any statement in the report about which the resident records a written comment disagreeing with that statement in the copy of the report completed by the rooming house operator; or **S. 98(2)(b) substituted by No. 45/2018 s. 90(3).**
 - (c) a statement that the rooming house operator has disagreed with in writing on the condition report, if the report was completed by the resident before or after it was completed by the rooming house operator. **S. 98(2)(c) inserted by No. 45/2018 s. 90(3).**

Division 3—Rent

99 Limit on rent in advance

A rooming house operator must not require a resident to pay rent more than 14 days in advance. **S. 99 amended by Nos 67/2010 s. 112, 45/2018 s. 91.**

Penalty: 60 penalty units.

S. 99A
inserted by
No. 45/2018
s. 92.

99A Rent payment

- (1) A rooming house operator, or that person's agent, must not require a resident to pay rent by a cheque or other negotiable instrument that is post-dated.

Penalty: 60 penalty units.

- (2) A rooming house operator 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 resident's bank account) is reasonably available to the resident.

Penalty: 60 penalty units.

- (3) A rooming house operator or that person's agent must permit the 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.

- (4) Without limiting subsection (3), the rooming house operator and the resident, by agreement, may change the manner in which rent is payable under the agreement in respect of the residency right.

- (5) The rooming house operator, or that person's agent, must give the resident information about any costs (including third party transaction fees, direct debit dishonour fees and any other electronic payment facility fees) that the resident may incur by using a particular payment method before the resident consents to use the payment method.

100 Receipts for rent

- (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—

S. 100(1)
amended by
Nos 67/2010
s. 113, 45/2018
s. 93(1).

- (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.

- (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
Nos 67/2010
s. 113, 45/2018
s. 93(2).

- (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: 25 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
Nos 67/2010
s. 113, 45/2018
s. 93(3).

Penalty: 25 penalty units.

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

- (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
 - (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
Nos 45/2002
s. 33(1)(a),
45/2018
s. 94(1).

- (1) Subject to subsection (3), a rooming house operator 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.

S. 101(3)
amended by
No. 45/2018
s. 94(2).

- (3) If a rooming house operator provides additional services to the resident at the resident's request, the operator 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 operator; 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.
- (5A) A rooming house operator must not increase the rent payable by a resident at intervals of less than 12 months.
- (5B) For the purposes of this section, rent is not increased merely because—
- (a) a rental rebate is applied, adjusted or cancelled under a fixed term rooming house agreement or agreement under section 94(2) where the rooming house operator is the Director of Housing or a registered agency; and
 - (b) the application, adjustment or cancellation of that rental rebate caused an increase in the amount payable by the resident under that fixed term rooming house agreement or agreement under section 94(2) (as the case may be).

S. 101(4)(b)
amended by
No. 45/2018
s. 94(3).

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

S. 101(5A)
inserted by
No. 45/2002
s. 33(2)
amended by
No. 45/2018
s. 94(3)(4).

S. 101(5B)
inserted by
No. 45/2018
s. 94(5) (as
amended by
No. 32/2020
s. 9).

- (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.

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

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

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

- (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.

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

S. 102(3)(b)
amended by
No. 45/2018
s. 355(1).

- (a) carry out an investigation; and
- (b) give a written report to the resident and a copy of the report to the rooming house operator.

- (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).

102A Director may investigate rent without application by resident

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

- (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 operator.
- (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.

S. 102A(2)
amended by
No. 45/2018
s. 355(2).

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;
 - (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;

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

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

- (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;
- (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)(ea) inserted by No. 45/2002 s. 34.
- (f) any improvements made to the room that should not be considered in calculating the rent because they were made by the resident. S. 104(3)(f) substituted by No. 63/2005 s. 11(2).
- (4) If the Tribunal makes an order under subsection (1)(a) in relation to a room, the rooming house operator 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. S. 104(4) amended by No. 45/2018 s. 355(3).
- (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.
- (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. S. 104(6) inserted by No. 63/2005 s. 11(3).

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

(b) 110% of the rent immediately before the notice was given—

whichever is less.

S. 105(1A)
inserted by
No. 63/2005
s. 12(2),
amended by
No. 45/2018
s. 355(4).

(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 operator in the notice given under section 94B.

S. 105(2)
amended by
Nos 63/2005
s. 12(3),
45/2018
s. 355(4).

(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 operator.

S. 105(2A)
inserted by
No. 63/2005
s. 12(4),
amended by
No. 45/2018
s. 355(4).

(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 operator.

(3) The order may specify the procedure for the refund to the resident.

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

106 Rent must be reduced if services are reduced

S. 106(1)
amended by
No. 45/2018
s. 355(5).

(1) If a rooming house ceases to provide services to a resident, the rooming house operator 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—
- S. 106(2)
inserted by
No. 45/2002
s. 35.
- (a) the reduction in rent is to take effect from the time the rooming house operator ceased to provide services to the resident; and
- S. 106(2)(a)
amended by
No. 45/2018
s. 355(6)(a).
- (b) the rooming house operator is to refund to the resident any excess rent paid by the resident from the time the rooming house operator ceased to provide services until the date of the order.
- S. 106(2)(b)
amended by
No. 45/2018
s. 355(6)(b).

106A Rent must be reduced if room capacity increased

If the room capacity of a room is increased under section 94B, the rooming house operator 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. 106A
inserted by
No. 63/2005
s. 13,
amended by
No. 45/2018
s. 355(7).

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: 60 penalty units.

S. 107
amended by
Nos 67/2010
s. 114, 45/2018
s. 95.

Division 4—Other charges

108 Separately metered rooms

- (1) A rooming house operator may charge a resident a charge not included in rent for electricity, gas and water consumed in the room if—
- S. 108(1)
amended by
No. 45/2018
s. 96.
- (a) the rooming house operator is responsible for the payment of the electricity, gas and water; and
- S. 108(1)(a)
amended by
No. 45/2018
s. 96.
- (b) the room is separately metered.

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

- (2) A charge under subsection (1) must not be more than the charge made by the relevant supplier of the utility.

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

- (3) This section does not apply to a resident of a shared room.

S. 109
amended by
No. 45/2018
s. 356.

109 Schedule of services provided to be given to resident

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

S. 109(a)
amended by
No. 45/2018
s. 356.

- (a) provide the resident with a separate schedule of the amount relating to the services that the rooming house operator 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.

S. 109A
(Heading)
amended by
No. 45/2018
s. 97(1).

109A Director of Housing or registered housing agency may impose service charge on resident

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

S. 109A(1)
amended by
No. 45/2018
s. 97(2).

- (1) The Director of Housing or a registered housing agency 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.

- (2A) A service charge must not exceed the cost of providing the service or facility to the resident. S. 109A(2A)
inserted by
No. 45/2018
s. 97(3).
- (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.
- (3A) If the Director of Housing or a registered housing agency imposes or varies a service charge on a resident, the Director of Housing or the registered housing agency, as the case requires, must give written notice to the resident of— S. 109A(3A)
inserted by
No. 45/2018
s. 97(4).
- (a) the imposition of the service charge; or
- (b) the increase or decrease made to the service charge, including particulars of the change in the cost of providing the services or facilities referred to in subsection (3).
- (3B) A resident may apply to the Tribunal for an order requiring the Director of Housing or the registered housing agency, as the case requires, to withdraw or vary the amount of a service charge imposed under subsection (1). S. 109A(3B)
inserted by
No. 45/2018
s. 97(4).
- (3C) On an application under subsection (3B), the Tribunal may order the Director of Housing or the registered housing agency, as the case requires, to— S. 109A(3C)
inserted by
No. 45/2018
s. 97(4).
- (a) withdraw the service charge; or
- (b) vary the amount of the service charge; or
- (c) otherwise vary the service charge as the Tribunal thinks fit.
- (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.

Pt 3 Div. 5
(Heading)
amended by
No. 45/2018
s. 357(1).

Division 5—General duties of residents and rooming house operators

110 Resident's use of room

A resident must use the room for residential purposes only.

Note to s. 110
inserted by
No. 45/2018
s. 98(1).

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

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 operator on the due date and in the agreed manner.
- (2) Despite subsection (1), if a rooming house operator 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 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—

S. 112(1)
amended by
No. 45/2018
s. 357(2).

S. 112(2)
inserted by
No. 63/2005
s. 16(2),
amended by
No. 45/2018
s. 357(2).

- (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.

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

Note to s. 112
inserted by
No. 45/2018
s. 98(2).

113 Quiet enjoyment—resident's duty

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

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

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

Note to s. 113
inserted by
No. 45/2018
s. 98(3).

114 Resident must keep and leave room reasonably clean

- (1) A resident must keep the room in a reasonably clean condition except to the extent that the rooming house operator is responsible under this Act for keeping the room in that condition.
- (2) At the end of an agreement in respect of a residency right, the resident must, as far as possible, leave the room—
 - (a) reasonably clean; and

S. 114
substituted by
No. 45/2018
s. 99.

- (b) in the same condition as it was when the resident entered into occupation of the room, taking into account fair wear and tear to the room.

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

S. 114A
inserted by
No. 45/2018
s. 99.

114A Resident must not interfere with prescribed safety device

A resident must not remove, deactivate or otherwise interfere with the operation of a prescribed safety device in any part of a rooming house unless it is reasonable in the circumstances to do so.

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

S. 115
(Heading)
inserted by
No. 45/2018
s. 100(1).

115 Resident must not make modifications without consent

S. 115
amended by
No. 45/2018
s. 100(2)(3)
(ILA s. 39B(1)).

- (1) A resident must not install any fixtures in the room or rooming house without the prior written consent of the rooming house operator.
- (2) A rooming house operator must not unreasonably refuse consent to modifications made by a resident that are—
- (a) reasonable alterations within the meaning of section 55 of the **Equal Opportunity Act 2010**; and

S. 115(2)
inserted by
No. 45/2018
s. 100(3).

- (b) assessed and determined to be required modifications by an accredited occupational therapist or a prescribed practitioner.

Note

Section 210AA provides that a person may apply to the Tribunal for an order for compensation if the person has suffered a loss as a result of discrimination by the rooming house operator or that person's agent in contravention of this section.

116 Resident must notify rooming house operator of and compensate for damage

S. 116
(Heading)
inserted by
No. 45/2018
s. 101(1).

- (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 operator of the damage and pay compensation for the damage to the rooming house operator.
- (2) A resident must report to the rooming house operator any damage to a room or damage to or breakdown of facilities, fixtures, furniture or equipment provided by the rooming house operator of which the resident has knowledge.

S. 116(1)
amended by
No. 45/2018
s. 101(2).

S. 116(2)
amended by
No. 45/2018
s. 101(3).

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

Note to s. 116
inserted by
No. 45/2018
s. 101(4).

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 operator's consent.

S. 117
amended by
No. 45/2018
s. 357(3).

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

Note to s. 117
inserted by
No. 45/2018
s. 102(1).

S. 118
(Heading)
inserted by
No. 45/2018
s. 357(4).

S. 118
amended by
No. 45/2018
s. 357(5).

118 Resident must give key to rooming house operator

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

Note to s. 118
inserted by
No. 45/2018
s. 102(2).

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of 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.

Note to s. 119
inserted by
No. 45/2018
s. 102(3).

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

S. 120AA
inserted by
No. 45/2018
s. 103.

120AA Rooming house operator's liability for excessive usage caused by faults

- (1) Subject to subsection (2), if a resident has been charged for excessive usage of a service at the room the resident occupies that is caused by a fault in infrastructure or any fixtures or buildings at or connected to the premises, the rooming house operator is liable for that part of the excessive charge that is additional to an amount of ordinary usage by the resident.

Example

Excessive usage charges caused by a leak in the underground pipe of a water service connected to the rooming house.

- (2) A rooming house operator is not liable for excessive usage charges under subsection (1) unless—

- (a) the resident notified the rooming house operator, as soon as practicable, of—
 - (i) the excessive usage charges; and
 - (ii) the fault that caused the excessive usage; and
 - (b) the fault was not caused by any action or omission of the resident.
- (3) A rooming house operator must reimburse a resident for any reasonable costs incurred by the resident for diagnosis of a fault referred to in subsection (1) conducted by a suitably qualified person.
- (4) A rooming house operator is not responsible for any excess usage charges or other costs for a fault caused by any property that is the responsibility of a service provider.

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

120AAB Application to Tribunal about excessive usage charges

S. 120AAB
inserted by
No. 45/2018
s. 103.

- (1) A rooming house operator or a resident may apply to the Tribunal to determine the liability of the rooming house operator and the resident for excessive usage charges referred to in section 120AA.
- (2) In making a determination under subsection (1), the Tribunal is to have regard to the following—
- (a) whether the resident had knowledge of the fault;
 - (b) whether the resident took reasonable steps to notify the rooming house operator, or that person's agent, of the fault;

- (c) whether the resident has been compensated by another person for any part of the excessive usage charges;
- (d) whether the rooming house operator has complied with this Act in respect of any urgent repairs;
- (e) any diagnosis made by a water authority or other suitably qualified person in respect of the fault;
- (f) any maintenance and repairs conducted by the rooming house operator;
- (g) any other matter the Tribunal considers appropriate.

S. 120
(Heading)
inserted by
No. 45/2018
s. 357(6).

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

S. 120(1)
amended by
No. 45/2018
s. 357(7).

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

S. 120(2)
amended by
No. 45/2018
s. 357(8).

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

Note to s. 120
inserted by
No. 45/2018
s. 104(1).

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

120A Rooming house operator must comply with rooming house standards

S. 120A
(Heading)
amended by
No. 45/2018
s. 357(9).

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

(1) A rooming house operator must ensure that a room provided to a resident of a rooming house complies with any applicable rooming house standard.

S. 120A(1)
amended by
No. 45/2018
s. 357(10).

(2) A rooming house operator must ensure that a facility or service provided to a resident of a rooming house complies with any applicable rooming house standard.

S. 120A(2)
amended by
No. 45/2018
s. 357(10).

(3) A rooming house operator must ensure that a common area provided for access by a resident of a rooming house complies with any applicable rooming house standard.

S. 120A(3)
amended by
No. 45/2018
s. 357(10).

121 Rooming house operator must provide access

A rooming house operator 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.

S. 121
(Heading)
inserted by
No. 45/2018
s. 357(11).

S. 121
amended by
No. 45/2018
s. 357(12).

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

Note to s. 121
inserted by
No. 45/2018
s. 104(2).

S. 122
(Heading)
inserted by
No. 45/2018
s. 357(13).

122 Quiet enjoyment—rooming house operator's duty

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

S. 122(1)
amended by
No. 45/2018
s. 357(14).

- (1) A rooming house operator 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,
amended by
No. 45/2018
s. 357(14).

- (2) A rooming house operator 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,
amended by
No. 45/2018
s. 357(14).

- (3) A rooming house operator 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.

Note to s. 122
inserted by
No. 45/2018
s. 105(1).

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

S. 123
amended by
No. 45/2018
s. 357(15).

123 Security

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

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

Note to s. 123
inserted by
No. 45/2018
s. 105(2).

124 Provision and display of statement of rights and house rules

S. 124
amended by
No. 67/2010
s. 115,
substituted by
No. 45/2018
s. 106.

- (1) A rooming house operator must give the resident, not later than the day on which the resident agrees to take up occupation—
 - (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: 25 penalty units.

- (2) A rooming house operator must display prominently in each resident's room—
 - (a) a one page 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: 25 penalty units.

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

125 Rooming house operator to give additional information

S. 125
(Heading)
inserted by
No. 45/2018
s. 107(1).

- (1) If there is no agent acting for the rooming house operator, a rooming house operator must, on or before the occupation day, give the resident—

S. 125(1)
amended by
Nos 67/2010
s. 116, 45/2018
s. 107(2)(a)(3).

S. 125(1)(a)
amended by
No. 45/2018
s. 107(2)(b).

- (a) written notice of the rooming house operator'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: 150 penalty units.

S. 125(2)
amended by
Nos 67/2010
s. 116, 45/2018
s. 107(4)(5).

- (2) If there is an agent acting for the rooming house operator, a rooming house operator must, on or before the occupation 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: 150 penalty units.

S. 125(3)
amended by
Nos 67/2010
s. 116, 45/2018
s. 107(6)(7).

- (3) A rooming house operator 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.

Penalty: 150 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.

Note to s. 125
inserted by
No. 45/2018
s. 107(8).

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

126 House rules

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

S. 126
amended by
No. 45/2018
s. 357(16).

127 Duties relating to house rules

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

S. 127(1)
amended by
Nos 67/2010
s. 117, 45/2018
s. 108(1)(2).

Penalty: 25 penalty units.

- (2) A rooming house operator must—

S. 127(2)
amended by
No. 45/2018
s. 108(3).

- (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.

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

Note to s. 127
inserted by
No. 45/2018
s. 108(4).

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—

S. 129(1)(a)
amended by
No. 45/2018
s. 109(1)(a).

- (a) the resident has taken reasonable steps to arrange for the rooming house operator or the rooming house operator's agent to immediately carry out the urgent repairs to the room or the rooming house; and

S. 129(1)(b)
amended by
No. 45/2018
s. 109(1)(b).

- (b) the resident is unable to get the rooming house operator or the agent to carry out those repairs.

- (2) If the resident carries out repairs under subsection (1)—

S. 129(2)(a)
amended by
No. 45/2018
s. 109(2)(a).

- (a) the resident must give the rooming house operator 7 days written notice of the repairs carried out and the cost; and

S. 129(2)(b)
amended by
Nos 67/2010
s. 168(1),
45/2018
s. 109(2)(b).

- (b) the rooming house operator is liable to reimburse the resident for the reasonable cost of the repairs 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; and

S. 129(2)(c)
inserted by
No. 45/2018
s. 109(2)(c).

- (c) the rooming house operator must reimburse the resident for the reasonable cost of repairs within 7 days after receiving written notice of—

- (i) the repairs; and
(ii) the cost of the repairs.

- (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.
- (4) If urgent repairs are required to an appliance, fitting or fixture with a rating in a prescribed efficiency rating system, and the appliance, fitting or fixture cannot be repaired, the resident may replace it with an appliance, fitting or fixture with a rating that is of or above a prescribed level of rating in the efficiency rating system.
- S. 129(4) inserted by No. 45/2018 s. 109(3) (as amended by No. 47/2019 s. 68).

130 Application to Tribunal for urgent repairs

- (1) A resident may apply to the Tribunal for an order requiring the rooming house operator or the rooming house operator'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 the 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 operator refuses 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.
- (3) Without limiting the matters to which the Tribunal may consider in determining an application under this section, the Tribunal must consider the Director's guidelines.
- S. 130(1) amended by No. 45/2018 s. 110(1).
- S. 130(1)(b) amended by Nos 67/2010 s. 168(2), 45/2018 s. 110(2).
- S. 130(1)(c) amended by No. 45/2018 s. 110(1)(a).
- S. 130(3) inserted by No. 45/2018 s. 110(3).

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

S. 131(1)
amended by
No. 45/2018
s. 111(1).

- (1) A resident may apply to the Director to investigate whether the rooming house operator is in breach of a duty to ensure the room or the rooming house is maintained in good repair if—

S. 131(1)(a)
amended by
No. 45/2018
s. 111(1).

- (a) the resident has given notice to the rooming house operator that repairs (other than urgent repairs) are required to the room or rooming house; and

S. 131(1)(b)
amended by
No. 45/2018
s. 111(1).

- (b) the rooming house operator has not carried out the repairs within 14 days after being given the notice.

S. 131(2)
substituted by
No. 45/2018
s. 111(2).

- (2) An application under subsection (1) and a report under subsection (3)—

- (a) must be in writing; and
(b) may be made or issued, as the case requires, by electronic communication in accordance with the **Electronic Transactions (Victoria) Act 2000**.

- (3) On an application under subsection (1), the Director—

S. 131(3)(a)
amended by
No. 45/2018
s. 111(3)(a).

- (a) may investigate; and

S. 131(3)(b)
amended by
No. 45/2018
s. 111(3)(b).

- (b) may negotiate arrangements for the carrying out of repairs if the Director is satisfied that the rooming house operator is in breach of the duty to maintain the room or rooming house in good repair; and

- (c) may issue a report that—
 - (i) states the duty to maintain the room or the rooming house in good repair has been breached; and
 - (ii) directs the rooming house operator to do any thing in order to comply with the duty to maintain the room or the rooming house in good repair.

S. 131(3)(c)
substituted by
No. 45/2018
s. 111(3)(c).

131A Director may investigate rooming house without application by resident

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

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

S. 131A(1)
amended by
No. 45/2018
s. 358.

S. 131A(2)(a)
amended by
No. 45/2018
s. 358.

S. 131A(2)(b)
amended by
No. 45/2018
s. 358.

(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 operator.

(3) An investigation may be carried out under this section whether or not the resident applies for an investigation under section 131.

S. 132
amended by
Nos 52/1998
s. 236(f),
45/2002 s. 38,
substituted by
No. 45/2018
s. 112.

132 Application to Tribunal for non-urgent repairs

(1) A resident may apply to the Tribunal for an order requiring the rooming house operator—

(a) to carry out specified non-urgent repairs if—

(i) the resident has given the rooming house operator written notice under section 131(1)(a); and

(ii) the rooming house operator has not carried out the repairs within 14 days after receiving the notice; or

(b) to comply with a report issued by the Director under section 131.

(2) A resident must not apply to the Tribunal under subsection (1)(b) before the Director has issued the report under section 131.

(3) The Tribunal must hear an application under subsection (1) within 7 days after the application is made.

(4) A resident must not apply to the Tribunal for a compliance order under section 212 for a breach of a duty that is the subject of an application under this section if that application has been determined by the Tribunal.

133 What can the Tribunal order?

(1) If the Tribunal is satisfied that the rooming house operator is in breach of the duty to maintain the room or the rooming house in good repair, the Tribunal may make an order that requires—

**S. 133(1)
substituted by
No. 45/2018
s. 113(1).**

- (a) the rooming house operator to carry out specified repairs; and
- (b) the use of a suitably qualified person to carry out the repairs; and
- (c) compensation to be paid in accordance with section 212(2).

(1A) Without limiting the matters to which the Tribunal may have regard in determining an application under subsection (1), the Tribunal must have regard to the following—

**S. 133(1A)
inserted by
No. 45/2018
s. 113(1).**

- (a) whether the repairs are needed because of—
 - (i) an act or omission of the resident; or
 - (ii) non-compliance by the resident with a provision of a fixed term rooming house agreement or an agreement under section 94(2) or a resident's duties under section 116;
- (b) whether the rooming house operator or that person's agent—
 - (i) was notified of the repairs; and
 - (ii) was given a reasonable opportunity to carry out the repairs;
- (c) whether the resident arranged for a suitably qualified person to carry out the repairs;
- (d) whether the rooming house operator was required to engage a suitably qualified person to verify the quality of the repairs;

(e) whether the resident has provided documentary evidence of the repair, including any receipts or copies of receipts for repair costs.

S. 133(2)
amended by
No. 45/2018
s. 113(2).

(2) If the Tribunal makes an order requiring the rooming house operator to carry out specified repairs, 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,
amended by
No. 45/2018
s. 113(3).

(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 operator 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.

S. 134(2)
amended by
No. 45/2018
s. 114(1)(a).

(2) The Tribunal must 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—

S. 134(2)(a)
amended by
No. 45/2018
s. 114(1)(b).

(a) a notice requiring the carrying out of repairs has been given to the rooming house operator in accordance with this Act; and

S. 134(2)(b)
amended by
No. 45/2018
s. 114(1)(b)(c).

(b) the rooming house operator has failed to comply with the duty to carry out the repairs; and

S. 134(2)(c)
inserted by
No. 45/2018
s. 114(1)(d).

(c) the rooming house operator has not demonstrated that the operator—

(i) is experiencing financial hardship; or

- (ii) would experience financial hardship if the rent was paid into the Rent Special Account.
- (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 operator; and S. 134(3)(a) amended by No. 45/2018 s. 114(2)(a).
- (b) on application by the rooming house operator, the Tribunal may order that the whole or such part of the rent as it may determine be paid to the rooming house operator before the end of that period, if it is satisfied that the operator has fulfilled or is fulfilling the operator's duty to carry out the repairs. S. 134(3)(b) amended by No. 45/2018 s. 114(2).
- (4) A resident may apply to the Tribunal to order that the whole or any part of the rent paid into the Rent Special Account be paid to the resident if— S. 134(4) inserted by No. 45/2018 s. 114(3).
- (a) the Tribunal has made an order under subsection (2) that rent be paid into the Rent Special Account; and
- (b) the rooming house operator has not effected any required repairs at the room or rooming house by the end of the period stated in that order.
- (5) In determining whether a rooming house operator has demonstrated that the operator has experienced or would experience financial hardship for the purposes of subsection (2), the Tribunal may have regard to any of the following— S. 134(5) inserted by No. 45/2018 s. 114(3).
- (a) an eviction notice given to the rooming house operator;

- (b) a disconnection notice in respect of a service or utility account held by the rooming house operator;
- (c) a notice of legal proceedings issued against the rooming house operator;
- (d) a letter from a non-profit organisation about the rooming house operator's loss of employment or financial hardship;
- (e) a notice from a lender to the rooming house operator, including—
 - (i) an overdraft call; or
 - (ii) a repossession notice in respect of a mortgaged property;
- (f) outstanding medical bills of the rooming house operator;
- (g) a letter from a doctor in respect of the impact of the rooming house operator's illness or carer's responsibility on the ability of the rooming house operator to earn an income;
- (h) a final notice from a school to the rooming house operator in respect of the payment of mandatory schooling fees;
- (i) funeral expenses payable by the rooming house operator;
- (j) a repossession notice served on the rooming house operator in respect of an essential item;
- (k) a hardship variation, or a written request to vary the terms of an existing loan held by the rooming house operator;
- (l) any other prescribed document.

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

- (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
- (d) for a purpose set out in section 137(a), (b), (c) or (d), 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; or
- (e) for the purpose set out in section 137(e), at any time between 8 a.m. and 6 p.m. on any day (except a public holiday) if at least 48 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.

S. 136
amended by
No. 45/2018
s. 115(a)(b).

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

S. 136(d)
amended by
Nos 63/2005
s. 20(b),
45/2018
s. 115(c).

S. 136(e)
inserted by
No. 45/2018
s. 115(d).

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 operator to carry out a duty under this Act or any other Act; or
- (d) the rooming house operator or the rooming house operator'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(c)
amended by
No. 45/2018
s. 359(1)(a).

S. 137(d)
amended by
Nos 63/2005
s. 21, 45/2018
s. 359(1).

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 operator or the rooming house operator's agent wishes to enter; and

S. 139(b)
amended by
No. 45/2018
s. 359(2).

- (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.

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

Note to s. 140
inserted by
No. 45/2018
s. 116.

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, when the rooming house operator, or that person's agent, exercises a right of entry under section 136 any person causes damage to or loss of the resident's goods in the room.
- (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.

S. 141(1)
substituted by
No. 45/2018
s. 117.

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

S. 142(1)
amended by
No. 45/2018
s. 359(3).

- (1) If the rooming house operator or the rooming house operator'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 operator and the rooming house operator'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—

S. 142(2)(a)
amended by
No. 45/2018
s. 359(4).

- (a) may make an order prohibiting the rooming house operator or the rooming house operator'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.

S. 142A
inserted by
No. 45/2002
s. 39,
amended by
Nos 67/2010
s. 118, 45/2018
s. 118.

142A Offence relating to entering room occupied by resident

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

Penalty: 60 penalty units.

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 operator 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.

S. 142B(1)
amended by
No. 45/2018
s. 119(1)(2).

Penalty: 150 penalty units in the case of a natural person;

750 penalty units in the case of a body corporate.

- (2) A rooming house operator 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.

S. 142B(2)
amended by
No. 45/2018
s. 119(3)(4).

Penalty: 150 penalty units in the case of a natural person;

750 penalty units in the case of a body corporate.

- (3) A rooming house operator 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.

S. 142B(3)
amended by
No. 45/2018
s. 119(5)(6).

Penalty: 150 penalty units in the case of a natural person;

750 penalty units in the case of a body corporate.

S. 142BA
inserted by
No. 12/2015
s. 10,
amended by
No. 45/2018
s. 120.

142BA Records of gas and electrical safety checks

A rooming house operator 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: 150 penalty units in the case of a natural person;
750 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—
 - (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.

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

Division 9—Rooming House Register

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

S. 142D
inserted by
No. 67/2010
s. 77,
amended by
Nos 56/2012
s. 16, 45/2018
s. 121.

142D Unregistered rooming house

An owner of a building who is not a rooming house operator, or that operator's agent, who has reason to believe that, or in all the circumstances ought to know 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: 60 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 operator of the
rooming house premises;

S. 142F(1)(f)
amended by
No. 45/2018
s. 122(1).

- (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 operator from a rooming house standard.

S. 142F(4)
amended by
No. 45/2018
s. 122(2).

**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.

142H Form of Rooming House Register

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

- (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;

S. 142J(3)(a)
amended by
No. 45/2018
s. 123.

- (b) information referred to in section 142F(3).

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

S. 142L(1)
amended by
No. 47/2019
s. 56.

- (1) A person whose interests are affected by a decision of the Director under section 142K or 142KA 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.

Division 10—Termination of residency rights in rooming houses

Subdivision 1—When does a residency right end?

142M 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 operator; or
- (b) the resident vacates the room after being given a notice to vacate.

142N Termination by Tribunal

A residency right in respect of a room ends on the date fixed in a possession order made by the Tribunal.

142O 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.

142P 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.

Pt 3 Div. 10
(Headings
and ss 142M–
142ZZA)
inserted by
No. 45/2018
s. 237 (as
amended by
Nos 32/2020
s. 11, 1/2021
s. 95).

S. 142M
inserted by
No. 45/2018
s. 237 (as
amended by
Nos 32/2020
s. 11, 1/2021
s. 95).

S. 142N
inserted by
No. 45/2018
s. 237 (as
amended by
Nos 32/2020
s. 11, 1/2021
s. 95).

S. 142O
inserted by
No. 45/2018
s. 237 (as
amended by
Nos 32/2020
s. 11, 1/2021
s. 95).

S. 142P
inserted by
No. 45/2018
s. 237 (as
amended by
Nos 32/2020
s. 11, 1/2021
s. 95).

S. 142Q
inserted by
No. 45/2018
s. 237 (as
amended by
Nos 32/2020
s. 11, 1/2021
s. 95).

142Q Residency rights—cancellation of licence or failure to renew licence

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**.

S. 142R
inserted by
No. 45/2018
s. 237 (as
amended by
Nos 32/2020
s. 11, 1/2021
s. 95).

142R 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 the resident's room; or
 - (b) take or attempt to take possession of a room in which a resident resides.

Penalty: 150 penalty units in the case of a natural person;

750 penalty units in the case of a body corporate.

- (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: 150 penalty units in the case of a natural person;
750 penalty units in the case of a body corporate.

Subdivision 2—Termination and new rooming house agreements because of family violence or personal violence

142S Application for termination or new rooming house agreement because of family violence or personal violence

S. 142S
inserted by
No. 45/2018
s. 237 (as
amended by
Nos 32/2020
s. 11, 1/2021
s. 95).

- (1) A person specified in subsection (2) may apply to the Tribunal for—
 - (a) an order terminating the existing fixed term rooming house agreement or agreement under section 94(2); or
 - (b) an order—
 - (i) terminating the existing fixed term rooming house agreement or agreement under section 94(2); and
 - (ii) requiring the rooming house operator to enter into a new fixed term rooming house agreement or agreement under section 94(2) with the person and other persons (if any) specified in the application.

- (2) For the purposes of subsection (1) the following persons are specified—
- (a) a party to the existing fixed term rooming house agreement or agreement under section 94(2) and who—
 - (i) has been or is being subjected to family violence by another party to the existing fixed term rooming house agreement or agreement; or
 - (ii) is a protected person under a personal safety intervention order made against another party to the existing fixed term rooming house agreement or agreement;
 - (b) a person—
 - (i) who is residing in the room as the person's principal place of residence; and
 - (ii) who is not a party to the existing fixed term rooming house agreement or agreement under section 94(2); and
 - (iii) who—
 - (A) has been or is being subjected to family violence by a party to the existing fixed term rooming house agreement or agreement; or
 - (B) is a protected person under a personal safety intervention order made against a party to the existing fixed term rooming house agreement or agreement.
- (3) For the purposes of subsection (2), a reference to a person who has been or is being subjected to family violence includes a person who is a protected person under a family violence safety

notice, family violence intervention order or recognised non-local DVO.

- (4) An application under subsection (1) may be made without the consent of the rooming house operator or any other party to the existing fixed term rooming house agreement or agreement under section 94(2).
- (5) If a person specified in subsection (2) is a child, an application under subsection (1) may be made on that child's behalf by a parent or guardian of the child who lives at the rooming house with the child.
- (6) For the purposes of a proceeding in relation to an application for an order under subsection (1), each of the following persons is a party to the proceeding—
 - (a) the applicant or the person on whose behalf the application was made;
 - (b) the rooming house operator;
 - (c) any resident who is excluded from the rooming house under a family violence safety notice, family violence intervention order, recognised non-local DVO or personal safety intervention order that protects a person specified in subsection (2);
 - (d) any other existing residents of the room.
- (7) 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.

S. 142T
inserted by
No. 45/2018
s. 237 (as
amended by
Nos 32/2020
s. 11, 1/2021
s. 95).

142T Tribunal orders

- (1) On an application under section 142S(1)(a), if satisfied as to the matters set out in subsection (1B), the Tribunal may make an order terminating the existing fixed term rooming house agreement or agreement under section 94(2).
- (1A) On an application under section 142S(1)(b), if satisfied as to the matters set out in subsection (2), the Tribunal may make an order—
 - (a) terminating the existing fixed term rooming house agreement or agreement under section 94(2); and
 - (b) requiring the rooming house operator to enter into a new fixed term rooming house agreement or agreement under section 94(2) with the person and other persons (if any) referred to in the application.
- (1B) For the purposes of subsection (1), the matters are—
 - (a) the specified person or that person's dependent children would be likely to suffer severe hardship if the fixed term rooming house agreement or agreement under section 94(2) were not terminated; and
 - (b) the hardship suffered by the specified persons would be greater than any hardship the rooming house operator would suffer if the order were made; and
 - (c) if a resident of the rooming house is excluded from the rooming house under a family violence safety notice, family violence intervention order, recognised non-local DVO or personal safety intervention order, it is reasonable to do so given the length of the exclusion under the notice or order and the length of the existing

- fixed term rooming house agreement or agreement under section 94(2); and
- (d) it is reasonable to do so given the interests of any other residents (other than any excluded resident) under the existing fixed term rooming house agreement or agreement under section 94(2) and, in particular, whether the other residents support the specified person's application.
- (2) For the purposes of subsection (1A), the matters are—
- (a) the specified person and other persons (if any) could reasonably be expected to comply with the duties of a resident under a fixed term rooming house agreement or agreement under section 94(2); and
- (b) the specified person or that person's dependent children would be likely to suffer severe hardship if the specified person were compelled to leave the rooming house; and
- (c) the hardship suffered by the specified person would be greater than any hardship the rooming house operator would suffer if the order were made; and
- (d) if a resident of the rooming house is excluded from the rooming house under a family violence safety notice, family violence intervention order, recognised non-local DVO or personal safety intervention order, it is reasonable to do so given the length of the exclusion under the notice or order and the length of the existing fixed term rooming house agreement; and

- (e) it is reasonable to do so given the interests of any other residents (other than any excluded resident) under the existing fixed term rooming house agreement or agreement under section 94(2) and, in particular, whether the other residents support the specified person's application.
- (3) In determining an application under section 142S(1), the Tribunal must take into account the following matters in relation to family violence or personal violence—
 - (a) whether an application for a family violence safety notice, family violence intervention order, non-local DVO or personal safety intervention order has been made by the specified person or in respect of the specified person;
 - (b) if an application for a family violence safety notice, family violence intervention order, non-local DVO or personal safety intervention order has been made by or in respect of the specified person—
 - (i) whether there is a family violence safety notice, family violence intervention order, recognised non-local DVO or personal safety intervention order in effect; and
 - (ii) if there is a notice or an order in effect, whether a resident of the rooming house is excluded from the rooming house under the notice or order;
 - (c) any prescribed matters;
 - (d) any other matter the Tribunal considers relevant.

- (4) If the Tribunal makes an order under subsection (1A), the new fixed term rooming house agreement or agreement under section 94(2)—
 - (a) is subject to the same rent and frequency of rent payments as the existing agreement; and
 - (b) if the existing agreement is a fixed term rooming house agreement, runs for a term not longer than the remainder of that fixed term; and
 - (c) otherwise, is on the same terms and conditions as the existing agreement, subject to any changes the Tribunal determines.
- (5) If the Tribunal makes an order under subsection (1), the Tribunal must specify the date on which the existing rooming house agreement or agreement under section 94(2) terminates.
- (6) If the Tribunal makes an order under subsection (1A), the existing fixed term rooming house agreement or agreement under section 94(2) is terminated on the signing of the new agreement.
- (7) If the Tribunal makes an order under subsection (1) or (1A), it may also make the following orders—
 - (a) an order that the rooming house operator must ensure that the specified person has access to the room under the existing rooming house agreement or agreement under section 94(2) to remove the person's goods;
 - (b) an order that the rooming house operator must not list information about the specified person on a residential tenancy database within the meaning of Part 10A.

(8) In this section—

specified person means a person specified
in section 142S(2).

S. 142U
inserted by
No. 45/2018
s. 237 (as
amended by
Nos 32/2020
s. 11, 1/2021
s. 95).

**142U Tribunal may determine parties' liability under
terminated agreement**

- (1) If the Tribunal decides to make an order under section 142T(1) or (1A), the Tribunal may determine the liability of any of the following persons in relation to any of the matters specified in subsection (2)—
 - (a) a resident who is excluded from a rooming house under—
 - (i) a family violence safety notice; or
 - (ii) a family violence intervention order; or
 - (iii) a recognised non-local DVO; or
 - (iv) a personal safety intervention order;
 - (b) a person specified in section 142S(2);
 - (c) any other resident under the existing fixed term rooming house agreement or agreement under section 94(2).
- (2) For the purposes of subsection (1), the specified matters are—
 - (a) a bond paid for the room; and
 - (b) any other existing liability under the existing agreement, including—
 - (i) liability relating to outstanding rent;
and
 - (ii) liability relating to damage caused to the rooming house;
and
 - (iii) liability relating to outstanding utility charges.

- (3) To remove doubt, the termination of an agreement under section 142T 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.

142V Cross-examination in a proceeding for termination or new agreement

S. 142V
inserted by
No. 45/2018
s. 237 (as
amended by
Nos 32/2020
s. 11, 1/2021
s. 95).

- (1) Unless the Tribunal gives leave, in a proceeding on an application under section 142S(1)—
- (a) a person subjected to family violence must not be personally cross-examined by the person who subjected that person to the family violence; and
 - (b) a protected person under a personal safety intervention order must not be personally cross-examined by the person against whom the personal safety intervention order was made.
- (2) For the purposes of subsection (1), a reference to a person subjected to family violence includes a protected person under a family violence safety notice, family violence intervention order or recognised non-local DVO.
- (3) The Tribunal may give leave under subsection (1) with or without conditions.
- (4) If leave is given under subsection (1), the resident may only cross-examine the person subjected to family violence or the protected person—
- (a) as to those matters set out in section 142T(2), in the case of an application under section 142S(1)(b); and
 - (b) as to those matters set out in section 142T(1B), in the case of an application under section 142S(1)(a); and
 - (c) in accordance with any conditions to which the leave granted is subject.

Subdivision 3—Notice or abandonment by resident

S. 142W
inserted by
No. 45/2018
s. 237 (as
amended by
Nos 32/2020
s. 11, 1/2021
s. 95).

142W Notice of intention to vacate room

- (1) Subject to subsection (2), a resident must give the rooming house operator at least 2 days notice of intention to vacate the room occupied by the resident.
- (2) A resident who has entered into a fixed term rooming house agreement must give the rooming house operator at least 14 days notice of intention to vacate the room occupied by the resident.

S. 142X
inserted by
No. 45/2018
s. 237 (as
amended by
Nos 32/2020
s. 11, 1/2021
s. 95).

142X Rent payable on termination without notice

- (1) A resident who vacates a room without giving notice must pay to the rooming house operator the rent for the lesser of the following periods—
 - (a) in the case of a resident who has entered into a fixed term rooming house agreement, 14 days after vacating the room; or
 - (b) in any other case, 2 days after vacating the room; or
 - (c) until another resident takes up occupancy of the room.

Penalty: 25 penalty units.

- (2) Subsection (1) does not apply if the rooming house or room has become unsafe or unfit for human habitation.

S. 142Y
inserted by
No. 45/2018
s. 237 (as
amended by
Nos 32/2020
s. 11, 1/2021
s. 95).

142Y 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 operator the rent for the period from the day the resident vacated the room until the day specified in the notice.

142Z Order of abandonment

- (1) If a rooming house operator believes that a resident has abandoned a room, the operator 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. 142Z
inserted by
No. 45/2018
s. 237 (as
amended by
Nos 32/2020
s. 11, 1/2021
s. 95).

**Subdivision 4—Notice by rooming house operator
or rooming house mortgagee**

142ZA End of fixed term rooming house agreement

- (1) A rooming house operator under a fixed term rooming house agreement, before the end of the term of that agreement, may give the resident a notice to vacate the room in the rooming house at the end of the fixed term.
- (2) The notice must specify a termination date that is on or after the date of the end of the fixed term and which is not less than 28 days after the date on which the notice is given.

S. 142ZA
inserted by
No. 45/2018
s. 237 (as
amended by
Nos 32/2020
s. 11, 1/2021
s. 95).

142ZB Damage

- (1) A rooming house operator may give a resident a notice to vacate the room occupied by the resident if the resident or the resident's visitor, whether by act or omission intentionally or recklessly causes serious damage to any part of the rooming house, including any safety equipment, or to any common areas.

S. 142ZB
inserted by
No. 45/2018
s. 237 (as
amended by
Nos 32/2020
s. 11, 1/2021
s. 95).

Example

Safety equipment such as smoke alarms.

- (2) The notice may specify a termination date that is the date on which the notice is given or a later date.

S. 142ZC
inserted by
No. 45/2018
s. 237 (as
amended by
Nos 32/2020
s. 11, 1/2021
s. 95).

142ZC Danger

- (1) A rooming house operator 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 endangers the safety of—
- (a) another resident of the rooming house; or
 - (b) occupiers of neighbouring properties; or
 - (c) the rooming house operator or the operators' agent; or
 - (d) a contractor or employee of a person referred to in paragraph (c).
- (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 operator 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. 142ZD
inserted by
No. 45/2018
s. 237 (as
amended by
Nos 32/2020
s. 11, 1/2021
s. 95).

142ZD Threats and intimidation

- (1) A rooming house operator may give a resident a notice to vacate if the resident has seriously threatened or intimidated—
- (a) the rooming house operator or the operator's agent; or
 - (b) a contractor or employee of a person referred to in paragraph (a).

- (2) The notice must specify a termination date that is not less than 14 days after the date on which the notice is given.

142ZE Disruption

- (1) A rooming house operator 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.

S. 142ZE
inserted by
No. 45/2018
s. 237 (as
amended by
Nos 32/2020
s. 11, 1/2021
s. 95).

142ZF Non-payment of rent

- (1) A rooming house operator 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 operator.
- (2) The notice must specify a termination date that is not less than 2 days after the date on which the notice is given.
- (3) For the purposes of this section, rent in relation to a fixed term rooming house agreement or agreement under section 94(2) under which the Director of Housing or a registered agency is the rooming house operator, is the amount payable to the rooming house operator by the resident to occupy the room and use facilities and services less any applicable rental rebate.

S. 142ZF
inserted by
No. 45/2018
s. 237 (as
amended by
Nos 32/2020
s. 11, 1/2021
s. 95).

142ZG Failure of resident to comply with Tribunal order

- (1) A rooming house operator 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.

S. 142ZG
inserted by
No. 45/2018
s. 237 (as
amended by
Nos 32/2020
s. 11, 1/2021
s. 95).

- (2) The notice must specify a termination date that is not less than 2 days after the date on which the notice is given.

S. 142ZH
inserted by
No. 45/2018
s. 237 (as
amended by
Nos 32/2020
s. 11, 1/2021
s. 95).

142ZH Successive breaches by resident

- (1) A rooming house operator may give a resident a notice to vacate the room occupied by the resident without first serving a breach of duty notice if—
- (a) the resident has breached a duty provision; and
 - (b) on 2 previous occasions the resident has been in breach of the same provision; and
 - (c) the rooming house operator or the operator's agent has on each occasion referred to in paragraph (b) given a breach of duty notice to the resident.
- (2) If the rooming house operator gives a breach of duty notice to the resident in respect of the breach referred to in subsection (1)(a), the rooming house operator 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.
- (3) The notice must specify a termination date that is not less than 2 days after the date on which the notice is given.

S. 142ZI
inserted by
No. 45/2018
s. 237 (as
amended by
Nos 32/2020
s. 11, 1/2021
s. 95).

142ZI Use of room for illegal purpose

- (1) A rooming house operator 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.
- (2) A rooming house operator may give a resident of a shared room a notice to vacate that room if the resident has used the room or permitted the

resident's visitors to use the room for any purpose that is illegal at common law or under an Act.

- (3) 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.

142ZJ Sale of rooming house

- (1) A rooming house operator 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.
- (2) If a rooming house operator 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 operator 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.
- (3) If a rooming house operator 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 (2), the rooming house operator 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.
- (4) 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.

Note

See section 142ZT regarding requirements for accompanying documentary evidence.

S. 142ZJ
inserted by
No. 45/2018
s. 237 (as
amended by
Nos 32/2020
s. 11, 1/2021
s. 95).

S. 142ZK
inserted by
No. 45/2018
s. 237 (as
amended by
Nos 32/2020
s. 11, 1/2021
s. 95).

142ZK Repairs or demolition

- (1) A rooming house operator may give a resident a notice to vacate the room occupied by the resident if—
 - (a) the rooming house operator intends to repair, renovate, reconstruct or demolish the rooming house immediately after the termination date; and
 - (b) the rooming house operator 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 operator must not give the notice under subsection (1) unless the rooming house operator 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.

Note

See section 142ZT regarding requirements for accompanying documentary evidence.

142ZL Prohibition on renting after notice

- (1) A rooming house operator must not rent a room vacated after a notice under section 142ZK for 6 months after the room is vacated.

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—

- (a) the Tribunal determines that the room may be rented; or
- (b) the repairs, renovations or reconstruction have been completed.

S. 142ZL
inserted by
No. 45/2018
s. 237 (as
amended by
Nos 32/2020
s. 11, 1/2021
s. 95).

142ZM Notice to have no effect in certain circumstances

- (1) A notice given under sections 142ZA, 142ZJ and 142ZK is of no effect—

- (a) if the agreement includes a provision enabling the rooming house operator or the resident 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
- (b) in any other case, if it specifies a termination date that is earlier than the end of the term of the fixed term residency agreement.

S. 142ZM
inserted by
No. 45/2018
s. 237 (as
amended by
Nos 32/2020
s. 11, 1/2021
s. 95).

- (2) A notice given under sections 142ZA, 142ZJ and 142ZK is of no effect if the giving of the notice would constitute direct discrimination within the meaning of the **Equal Opportunity Act 2010**.
- (3) A notice under section 142ZA is of no effect if it was given in response to—
 - (a) the exercise, or proposed exercise, by the by the resident of a right under this Act; or
 - (b) the resident making a report under section 116(2).
- (4) A notice under section 142ZD 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.
- (5) A person is not entitled to apply to the Tribunal challenging the validity of a notice—
 - (a) under section 142ZA after the end of 14 days after the date on which the notice is given; and
 - (b) under section 142ZJ or 142ZK after the end of 30 days after the date on which the notice is given.

S. 142ZN
inserted by
No. 45/2018
s. 237 (as
amended by
Nos 32/2020
s. 11, 1/2021
s. 95).

142ZN Resident in transitional housing refuses alternative accommodation

- (1) A rooming house operator 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.

142ZO Notice by owner of building or other person who is not rooming house operator

- (1) This section applies if a person who is not a rooming house operator leases a building to another person and the building is being used to operate a rooming house (whether by that lessee or another person and whether or not the lessee or building owner has consented to that use) 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

S. 142ZO
inserted by
No. 45/2018
s. 237 (as
amended by
Nos 32/2020
s. 11, 1/2021
s. 95).

- (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 (3), 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 operator, 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.
- (3) Notice to vacate is not required 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 operator.
- (4) 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.
- (5) A person who gives 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 the notice to vacate.
- (6) 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.
- (7) 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 operator; and
 - (b) must pay rent to the owner of the building for the notice period, unless the resident can demonstrate that the resident has paid rent for the notice period to the rooming house operator.
- (8) Subject to subsection (10), nothing in this section imposes on a person required to give notice to vacate to a resident under this section the rights, duties and obligations of a rooming house operator.
- (9) Nothing in this section prevents a rooming house operator, in accordance with this Act, giving 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 operator—

- (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.
- (10) If a person required 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—
- (a) 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 142ZB, 142ZC, 142ZD, 142ZE, 142ZF and 142ZI, Part 7 and Part 9 apply; and
 - (b) a reference to a rooming house operator in those provisions includes a reference to that person.
- (11) For the purposes of subsection (7), *notice period* means the period—
- (a) commencing on the day the person required 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.

S. 142ZP
inserted by
No. 45/2018
s. 237 (as
amended by
Nos 32/2020
s. 11, 1/2021
s. 95).

142ZP 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 60 days after the date on which the notice is given.

142ZQ Notice to vacate given by Tribunal order under Rooming House Operators Act 2016

S. 142ZQ
inserted by
No. 45/2018
s. 237 (as
amended by
Nos 32/2020
s. 11, 1/2021
s. 95).

- (1) A rooming house operator 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 operator.
- (2) The notice must specify a termination date that is the date specified by the Tribunal as the termination date.

142ZR Notice to vacate—refusal of licence under Rooming House Operators Act 2016

S. 142ZR
inserted by
No. 45/2018
s. 237 (as
amended by
Nos 32/2020
s. 11, 1/2021
s. 95).

- (1) A rooming house operator may give a resident a notice to vacate the room occupied by the resident if—
- (a) the rooming house operator'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 operator'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.

Subdivision 5—Notices under this Division

S. 142ZS
inserted by
No. 45/2018
s. 237 (as
amended by
Nos 32/2020
s. 11, 1/2021
s. 95).

142ZS Form of notice of intention to vacate

- (1) A notice of intention to vacate a room in a rooming house—
 - (a) may be given orally; or
 - (b) if required by the rooming house operator, must be given in writing.
- (2) If a notice of intention to vacate a room is required to be in writing, it is not valid unless it is signed by the person giving the notice or by that person's agent.

S. 142ZT
inserted by
No. 45/2018
s. 237 (as
amended by
Nos 32/2020
s. 11, 1/2021
s. 95).

142ZT Form of notice to vacate

A notice to vacate a room in a rooming house given under this Division is not valid unless—

- (a) it is in the relevant prescribed form; and
- (b) it is addressed to the resident; and
- (c) it is signed by the person giving the notice or by that person's agent; and
- (d) it specifies the reason or reasons for giving the notice; and
- (e) in the case of a notice to vacate given under section 142ZJ or 142ZK, it is accompanied by documentary evidence, as approved by the Director from time to time, which supports the reason for giving the notice; and
- (f) it specifies the termination date which is the date by which compliance is required.

S. 142ZU
inserted by
No. 45/2018
s. 237 (as
amended by
Nos 32/2020
s. 11, 1/2021
s. 95).

142ZU 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 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.

142ZV How can a notice be withdrawn?

- (1) A notice of intention to vacate or a notice to vacate given under this Division is withdrawn only if a notice of withdrawal is given.
- (2) 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) A notice of intention to vacate a room given orally may be withdrawn orally.

S. 142ZV
inserted by
No. 45/2018
s. 237 (as
amended by
Nos 32/2020
s. 11, 1/2021
s. 95).

Subdivision 6—Can a notice to vacate be challenged?

142ZW Application of Subdivision

Nothing in this Subdivision affects any right a resident may have to challenge the validity of any other notice to vacate under this Act.

S. 142ZW
inserted by
No. 45/2018
s. 237 (as
amended by
Nos 32/2020
s. 11, 1/2021
s. 95).

142ZX Resident may apply to Tribunal

- (1) On or before the hearing of an application for a possession order in respect of a notice to vacate given under section 142ZJ or 142ZK, a 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.

S. 142ZX
inserted by
No. 45/2018
s. 237 (as
amended by
Nos 32/2020
s. 11, 1/2021
s. 95).

S. 142ZY
inserted by
No. 45/2018
s. 237 (as
amended by
Nos 32/2020
s. 11, 1/2021
s. 95).

142ZY What can the Tribunal order?

- (1) On an application under section 142ZX, the Tribunal may determine whether or not the notice to vacate is valid.
- (2) If the Tribunal determines that the notice to vacate is valid, the resident is not entitled to further apply 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.

S. 142ZZ
inserted by
No. 45/2018
s. 237 (as
amended by
Nos 32/2020
s. 11, 1/2021
s. 95).

142ZZ Resident may challenge notice to vacate on grounds of family violence or personal violence

- (1) On or before the hearing of an application for a possession order, a resident who has received a notice to vacate under section 142ZB, 142ZC, 142ZD, 142ZE, 142ZG, 142ZH or 142ZI may apply to the Tribunal challenging the validity of the notice to vacate on the grounds that the relevant act or breach for which the notice to vacate was given was caused by the act of a person who has subjected the resident to family violence or personal violence.
- (2) An application under subsection (1) must be made within 30 days after the notice to vacate is given.

S. 142ZZA
inserted by
No. 45/2018
s. 237 (as
amended by
Nos 32/2020
s. 11, 1/2021
s. 95).

142ZZA What can the Tribunal order?

On an application under section 142ZZ, the Tribunal must make an order that the notice to vacate is invalid if satisfied that—

- (a) the applicant has been, or is being, subjected to family violence or personal violence; and

- (b) the relevant act or breach on which the notice to vacate was given was caused by the act of a person who has subjected the applicant to family violence or personal violence.

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

S. 143AA
inserted by
No. 67/2010
s. 9.

- (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.

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.

Note

Section 145E requires a caravan park owner to disclose certain information about the land on which the caravan park is situated to the resident before an agreement under this subsection is entered into.

Note to
s. 144(1)
inserted by
No. 45/2018
s. 125(1).

- (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.

- (4A) A term of an agreement under this section is also invalid if it is a prohibited term or a term that this Act provides must not be included in an agreement under this section.

S. 144(4A)
inserted by
No. 45/2018
s. 125(2).

- (5) In this section *resident* includes a proposed resident.

- (6) A term of an agreement that purports that a person is to occupy a site in a caravan park for holidaying or non-residential purposes is prima facie evidence that the agreement is in respect of occupation of the caravan site for holidaying or non-residential purposes.

S. 144(6)
inserted by
No. 45/2018
s. 125(3).

Note

The Tribunal may declare under sections 144A and 472 that a term of an agreement under this section is invalid.

Note to s. 144
inserted by
No. 45/2018
s. 125(4).

S. 144AA
inserted by
No. 45/2018
s. 126 (as
amended by
No. 1/2021
s. 92).

144AA Prohibited terms—general

- (1) An agreement under section 144 must not include any of the following terms—
 - (a) a term that requires the resident to take out any form of insurance;
 - (b) a term that exempts the caravan park owner from liability for an act of—
 - (i) the caravan park owner or that person's agent; or
 - (ii) a person acting on behalf of the caravan park owner or that person's agent;
 - (c) a term that provides that if the resident contravenes the agreement, the resident is liable to pay—
 - (i) all or part of the remaining rent under the agreement; or
 - (ii) increased rent; or
 - (iii) a penalty; or
 - (iv) liquidated damages;
 - (d) a term that provides that if the resident does not contravene the agreement—
 - (i) the rent is reduced; or
 - (ii) the rent may be reduced; or
 - (iii) the resident is to be paid a rebate or other benefit; or
 - (iv) the resident may be paid a rebate or other benefit;
 - (e) any other prescribed prohibited term.
- (2) A term in an agreement under section 144 must not include a term that requires a party to the agreement to bear any fees, costs or charges

incurred by the other party in connection with the preparation of the agreement.

Note

Section 144 provides that terms which must not be included in an agreement are invalid.

144AB Prohibited terms—professional cleaning

S. 144AB
inserted by
No. 45/2018
s. 126 (as
amended by
No. 1/2021
s. 92).

- (1) Subject to this section, an agreement under section 144 must not include—
 - (a) a term that requires all or part of the caravan to be professionally cleaned at the end of the agreement; or
 - (b) a term that requires the resident to pay the cost of having all or part of the caravan in the caravan park professionally cleaned at the end of the agreement.
- (2) An agreement under section 144 may include a term that requires the caravan to be professionally cleaned if professional cleaning is required to restore the caravan to the condition it was in immediately before the start of the agreement, taking into account fair wear and tear.
- (3) An agreement under section 144 may include a term that requires the resident to pay the cost of having all or part of the caravan professionally cleaned if professional cleaning is required to restore the caravan to the condition it was in immediately before the start of the agreement, taking into account fair wear and tear.

S. 144AC
inserted by
No. 45/2018
s. 126 (as
amended by
No. 1/2021
s. 92).

144AC Offence to include prohibited term in agreement under section 144

- (1) A caravan park owner, caravan owner or resident must not prepare or authorise the preparation of an agreement under section 144 that contains a term referred to in section 144AA.

Penalty: 25 penalty units.

- (2) If an agreement under section 144 contains a prohibited term, that term is void and unenforceable.

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.

S. 144B
inserted by
No. 45/2018
s. 127.

144B Application to Tribunal to order preparation of agreement

- (1) A resident may apply to the Tribunal for an order requiring a caravan park owner or a caravan owner (as the case requires) to prepare and enter into a written agreement under section 144.

- (2) The Tribunal may make an order requiring a caravan park owner to prepare and enter into a written agreement under section 144(1) if the Tribunal is satisfied that—
- (a) the resident and the caravan park owner or caravan owner (as the case requires) are subject to an existing agreement that is not in writing or that is only partly in writing; and
 - (b) the resident is continuing in occupation of a caravan or site in the caravan park after a previous fixed term agreement has ended.
- (3) The order may specify—
- (a) the terms of the agreement; and
 - (b) a commencement date for the agreement which may be a date that is before the date the order was made.

145 Caravan park owner to notify prospective resident of rights

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.

Penalty: 25 penalty units.

S. 145
amended by
Nos 67/2010
s. 119, 45/2018
s. 128.

S. 145(b)
amended by
No. 63/2005
s. 22.

Pt 4 Div. 1A.
(Headings
and ss 145A,
145B)
inserted by
No. 45/2018
s. 129 (as
amended by
No. 47/2019
s. 69).

Division 1A—Discrimination in relation to residency rights

S. 145A
inserted by
No. 45/2018
s. 129 (as
amended by
No. 47/2019
s. 69).

145A Section 144(1) or (2) agreement application forms must include prescribed information

A caravan park owner or caravan owner or that person's agent must not provide a person with an application form to apply for an agreement under section 144(1) or (2) unless the application form includes a statement that contains the prescribed information.

S. 145B
inserted by
No. 45/2018
s. 129 (as
amended by
No. 47/2019
s. 69).

145B Caravan park owner or caravan owner must not unlawfully discriminate against another person by refusing to grant agreement under section 144(1) or (2)

- (1) A caravan park owner or caravan owner must not contravene section 52 of the **Equal Opportunity Act 2010** by refusing a person to enter an agreement under section 144(1) or (2) on the basis of an attribute set out in section 6 of that Act.
- (2) A caravan park owner or caravan owner must not instruct or permit that person's agent to refuse a person to enter an agreement under section 144(1) or (2) on the basis of an attribute set out in section 6 of the **Equal Opportunity Act 2010**.

Note

Section 210AA provides that a person may apply to the Tribunal for an order for compensation if the person has suffered a loss as a result of discrimination by the caravan park owner or caravan owner or that person's agent in contravention of this Division.

Division 1B—Disclosures and representations prior to granting residency rights

Pt 4 Div. 1B
(Headings
and ss 145C–
145F)
inserted by
No. 45/2018
s. 129 (as
amended by
No. 47/2019
s. 69).

145C Restriction on use of personal information provided by prospective residents

S. 145C
inserted by
No. 45/2018
s. 129 (as
amended by
No. 47/2019
s. 69).

A caravan park owner or caravan owner or that person's agent must not use personal information disclosed by a person on an application form to apply for an agreement under section 144(1) or (2) unless the use is for—

- (a) the purposes of assessing the person's suitability as a resident; or
- (b) another purpose required by the Act.

145D Caravan park owner or caravan owner must not request prescribed information from applicants

S. 145D
inserted by
No. 45/2018
s. 129 (as
amended by
No. 47/2019
s. 69).

A caravan park owner or caravan owner or that person's agent must not request a person who applies for an agreement under section 144(1) or (2) to disclose the prescribed information.

145E Information that caravan park owners or caravan owners must disclose before agreement under section 144(1) or (2) commences

S. 145E
inserted by
No. 45/2018
s. 129 (as
amended by
No. 47/2019
s. 69).

- (1) Before a resident enters into an agreement under section 144(1), a caravan park owner must disclose the following information to the resident—
 - (a) if the caravan park owner has engaged an agent to sell the caravan park or prepared a contract of sale, that there is a proposal to sell the caravan park;

- (b) if the caravan park owner is not the freehold owner of the land on which the caravan park is situated—
 - (i) the nature of the caravan park owner's interest in the land; and
 - (ii) any limitations on the caravan park owner's ability to grant interests in the land to the resident;
 - (c) if the caravan park owner is the owner of the land on which the caravan park is situated and a mortgagee has commenced a proceeding to enforce a mortgage over the land, that a mortgagee is taking action for possession of the land;
 - (d) if the site is separately metered for supply of electricity and the caravan park is supplied with electricity from an embedded electricity network, the prescribed details of the embedded electricity network;
 - (e) any other prescribed information.
- (2) Before a resident enters into an agreement under section 144(2), a caravan owner must disclose the following information to the resident—
- (a) if the caravan owner has engaged an agent to sell the caravan or prepared a contract of sale, that there is a proposal to sell the caravan;
 - (b) if a mortgagee has commenced a proceeding to enforce a mortgage over the caravan, that a mortgagee is taking action for possession of the caravan;
 - (c) any other prescribed information.
- (3) Disclosure under this section must be in a form approved by the Director.

145F Offence to enter into certain agreements about caravan park land

S. 145F
inserted by
No. 45/2018
s. 129 (as
amended by
No. 47/2019
s. 69).

- (1) Subject to subsection (2), a caravan park owner whose interest in the land on which the caravan park is situated is granted under a lease must not enter into an agreement with a resident under section 144(1) that is for a period of occupancy which exceeds the date on which the term of the lease expires.

Penalty: 60 penalty units.

- (2) For the purpose of subsection (1), an option to extend or renew the lease held by the caravan park owner is not to be taken into account in determining the end date on which the term of the lease expires.

Note

A caravan park resident may apply to the Tribunal under section 452(3AC) in respect of a breach to disclose information required under this section.

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
Nos 67/2010
s. 120, 45/2018
s. 130.

Penalty: 60 penalty units.

S. 147
amended by
Nos 67/2010
s. 121, 45/2018
s. 131.

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 one month.

Penalty: 60 penalty units.

148 Condition report

S. 148(1)
amended by
Nos 45/2002
s. 46(1),
67/2010 s. 122,
substituted by
No. 45/2018
s. 132(1).

- (1) Before a resident enters into occupation of the site or the caravan, a caravan park owner or a caravan owner must give the 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 site, including any fixtures or connections to the site, or the caravan (as the case requires), on the day specified in the report.

Penalty: 25 penalty units.

S. 148(1A)
inserted by
45/2018
s. 132(1).

- (1A) For the purposes of subsection (1), a caravan park owner or a caravan owner, as the case requires, is deemed to give 2 copies of a condition report to the resident if the caravan park owner or the caravan owner gives the resident an electronic copy of the condition report.

S. 148(1B)
inserted by
45/2018
s. 132(1).

- (1B) A condition report must be in the prescribed form.

S. 148(2)
amended by
Nos 45/2002
s. 46(2),
45/2018
s. 132(2).

- (2) Within 5 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.

- (3) A resident who is not given a condition report within the period referred to in subsection (1) may complete a condition report and give it to the caravan park owner or the caravan owner (or the agent of either of those persons), during the period between inspecting the site or the caravan and 5 business days after entering into occupation of the site or the caravan. **S. 148(3) inserted by No. 45/2018 s. 132(3).**
- (4) A copy of the condition report that is completed under subsection (1) or (3) is to be retained by the caravan park owner or the caravan owner (as the case requires) and the resident. **S. 148(4) inserted by No. 45/2018 s. 132(3).**
- (5) Within 10 days after the end of an agreement under section 144, the caravan park owner, or the caravan owner, or that person's agent (as the case requires), must complete the copy of the condition report retained by the caravan park owner, or the caravan owner, or the resident under this section—
- (a) in the presence of the other party; or
 - (b) in the absence of the other party, if the party has given the absent other party a reasonable opportunity to be present when the condition report is completed.

Note

Section 506(1)(da) provides that a document to be served on or given to a person under this Act may be served or given by electronic communication in accordance with the **Electronic Transactions (Victoria) Act 2000**.

148A Caravan park owner, caravan owner or caravan park resident may apply to Tribunal to amend inaccurate or incomplete condition report

S. 148A inserted by No. 45/2018 s. 133.

- (1) Within 30 days after an agreement in respect of a residency right under this Part has commenced, the caravan park owner, caravan owner or caravan park resident may apply to the Tribunal to amend

a statement in a condition report on the basis that the statement is inaccurate or incomplete.

- (2) On an application under subsection (1), the Tribunal may order—
 - (a) that the condition report is to be amended in the manner specified in the order; or
 - (b) that the condition report is not required to be amended in the manner specified in the order.
- (3) This section does not limit the operation of sections 18, 29, 30, 151 and 152 of the Australian Consumer Law (Victoria).

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.

S. 149(1A)
inserted by
No. 45/2018
s. 134(1).

- (1A) A condition report that is given to a caravan park owner or a caravan owner is taken to be notice given to the caravan park owner or a caravan owner of any defects or outstanding repairs stated in the report.
- (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) any statement in the report about which the resident records a written comment disagreeing with the statement on the copy

S. 149(2)(b)
substituted by
No. 45/2018
s. 134(2).

of the report completed by the caravan park owner, or the caravan owner (as the case requires); or

- (c) a statement on the condition report with which the caravan park owner, or the caravan owner (as the case requires) has disagreed in writing, if the report was completed by the resident before or after it was completed by the caravan park owner or the caravan owner.

S. 149(2)(c)
inserted by
No. 45/2018
s. 134(2).

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: 60 penalty units.

S. 150(1)
amended by
Nos 67/2010
s. 123, 45/2018
s. 135.

- (2) A caravan owner must not require a resident to pay a hiring charge more than 28 days in advance.

Penalty: 60 penalty units.

S. 150(2)
amended by
Nos 67/2010
s. 123, 45/2018
s. 135.

150A Payment of rent or hiring charge

- (1) A caravan park owner or a caravan owner, or that person's agent, must not require a resident to pay a hiring charge or rent by a cheque or other negotiable instrument that is post-dated.

Penalty: 60 penalty units.

S. 150A
inserted by
No. 45/2018
s. 136.

- (2) A caravan park owner or a caravan owner, or that person's agent, must ensure that a hiring charge or rent payment method that incurs no additional costs (other than bank fees or account fees payable on the resident's bank account) is reasonably available to the resident.

Penalty: 60 penalty units.

- (3) A caravan park owner or a caravan owner, or that person's agent, must permit the resident to pay the hiring charge or 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.
- (4) Without limiting subsection (3), the caravan park owner or the caravan owner (as the case requires) and the resident, by agreement, may change the manner in which the hiring charge or rent is payable under the agreement made under section 144.
- (5) The caravan park owner or the caravan owner or that person's agent (as the case requires), must give the resident information about any costs (including third party transaction fees, direct debit dishonour fees and any other electronic payment facility fees) that the resident may incur by using a particular payment method before the resident consents to use the payment method.

151 Receipts for rent or hiring charge

S. 151(1)
amended by
Nos 67/2010
s. 124, 45/2018
s. 137.

- (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: 25 penalty units.

- (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—

S. 151(2)
substituted by
No. 45/2002
s. 47,
amended by
Nos 67/2010
s. 124, 45/2018
s. 137.

- (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: 25 penalty units.

- (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.

S. 151(2A)
inserted by
No. 45/2002
s. 47,
amended by
Nos 67/2010
s. 124, 45/2018
s. 137.

Penalty: 25 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.

S. 151(2B)
inserted by
No. 45/2002
s. 47.

- (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?

S. 152(1)
amended by
No. 45/2002
s. 48(1)(a).

- (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(2)
amended by
No. 45/2002
s. 48(1)(b).

- (2) A caravan owner must give a resident at least 60 days notice in the prescribed form of a proposed hiring charge increase.

- (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.

S. 152(5)
amended by
No. 45/2002
s. 48(1)(c).

- (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(5A)
inserted by
No. 45/2002
s. 48(2),
amended by
No. 45/2018
s. 138.

- (5A) A caravan park owner must not increase the rent payable by a resident at intervals of less than 12 months.

- (5B) A caravan owner must not increase the hiring charge payable by a resident at intervals of less than 12 months.

S. 152(5B)
inserted by
No. 45/2002
s. 48(2),
amended by
No. 45/2018
s. 138.

- (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;
 - (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; S. 155(3)(ea)
inserted by
No. 45/2002
s. 49(1).
 - (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;
 - (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; S. 155(4)(ab)
inserted by
No. 45/2002
s. 49(2).
 - (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.

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

S. 159
amended by
No. 45/2002
s. 50 (ILA
s. 39B(1)).

S. 159(2)
inserted by
No. 45/2002
s. 50.

- (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. 160
amended by
Nos 67/2010
s. 125, 45/2018
s. 139.

160 Resident's goods not to be taken for rent or hiring charges

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

Penalty: 60 penalty units.

Division 4—Other charges

S. 161
substituted by
No. 45/2018
s. 140.

161 Supply of key

- (1) A caravan park owner must not charge an initial fee for the supply of a key or device, or for both if necessary, that enable a resident to gain vehicular access to the park.
- (2) A caravan park owner may charge a reasonable fee for the supply of an additional or a replacement key or device requested by the resident.
- (3) On termination of the residency right, a resident must return all keys and devices provided by the caravan park owner to the caravan park owner.

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.

- (3) A resident is liable for all charges in respect of installation and connection of services from a supply point on the site occupied by the resident to the resident's caravan.

S. 162(3)
inserted by
No. 45/2018
s. 141.

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;
- (ab) all rates, taxes or charges payable under any Act other than charges payable by the resident under this Division;
- (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;
- (e) any prescribed fees and charges.

S. 163(ab)
inserted by
No. 45/2018
s. 142(1).

S. 163(d)
amended by
No. 45/2018
s. 142(2).

S. 163(e)
inserted by
No. 45/2018
s. 142(3).

164 Owner's responsibility for charges for supply to non-complying appliances

- (1) A caravan owner is liable for the cost of water, gas or electricity 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 an appliance, fitting or fixture with a rating that is

S. 164(1)
amended by
No. 45/2018
s. 143 (as
amended by
No. 47/2019
s. 70).

of or above a prescribed level of rating in an efficiency rating system for the caravan.

S. 164(2)
amended by
No. 85/2006
s. 173(Sch. 1
item 9).

- (2) Subsection (1) applies despite anything to the contrary in section 162 of this Act and Part 13 of the **Water Act 1989**.

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

S. 166(1)
amended by
Nos 45/2002
s. 51, 67/2010
s. 126, 45/2018
s. 144(1).

- (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.

Penalty: 60 penalty units.

- (2) If the relevant supplier of the utility has issued an account to the caravan park owner, any amount to be recovered from the resident for the account must be adjusted by deducting any concession or rebate to which the resident is entitled.

S. 166(2)
amended by
No. 45/2002
s. 51,
substituted by
No. 45/2018
s. 144(2).

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

S. 166(3)(a)
amended by
No. 45/2002
s. 51.

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.

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

Note to s. 167
inserted by
No. 45/2018
s. 145(1).

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.

Note to s. 169
inserted by
No. 45/2018
s. 145(2).

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

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.

Note to s. 170
inserted by
No. 45/2018
s. 145(3).

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

S. 171
substituted by
No. 45/2018
s. 146.

171 Resident must keep and leave site reasonably clean

- (1) A resident must keep the site in a reasonably clean condition except to the extent that the caravan park owner is responsible under this Act for keeping the site in that condition.
- (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.
- (3) At the end of the residency, the resident must leave the site, as far as practicable—
 - (a) reasonably clean and tidy; and

- (b) in the same condition as when the resident entered into possession of the site, taking into account fair wear and tear to the site during the residency.

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

171A Resident must keep caravan in good repair

**S. 171A
inserted by
No. 45/2018
s. 146.**

- (1) A resident who owns a caravan situated on the site occupied by the resident must keep the caravan in a condition, taking into account fair wear and tear, that—
 - (a) is in good repair; and
 - (b) does not pose a significant health risk; and
 - (c) is safe to occupy.
- (2) At the end of a residency, the resident must, as far as practicable, leave the caravan in the same condition as it was when the resident entered into occupation of the caravan, taking into account fair wear and tear.

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

171B Resident must not make site or caravan modifications without consent

**S. 171B
inserted by
No. 45/2018
s. 146.**

- (1) A resident must not, without the caravan park owner's written consent—
 - (a) install any fixtures on the site or in the caravan park; or
 - (b) erect any structure on the site or in the caravan park; or

- (c) make any alteration, renovation or addition to the site or caravan park.
- (2) If a resident is not the owner of a caravan, the resident must not, without the caravan owner's prior written consent—
 - (a) install any fixtures to the caravan; or
 - (b) make any alteration, renovation or addition to the caravan.
- (3) A caravan park owner or a caravan owner, as the case requires, must not unreasonably refuse consent to modifications made by a resident that are—
 - (a) reasonable alterations within the meaning of section 55 of the **Equal Opportunity Act 2010**; and
 - (b) assessed and determined to be required modifications by an accredited occupational therapist or a prescribed practitioner.

Note

Section 210AA provides that a person may apply to the Tribunal for an order for compensation if the person has suffered a loss as a result of discrimination by the caravan park owner or caravan owner or that person's agent in contravention of this section.

S. 172
repealed by
No. 45/2018
s. 147.

* * * * *

173 Resident must notify owner of and compensate for damage

S. 173(1)
amended by
No. 45/2018
s. 148(1).

- (1) If any damage other than fair wear and tear is caused to a site, 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 a site or damage to or breakdown of communal facilities of which the resident has knowledge.

S. 173(2)
amended by
No. 45/2018
s. 148(2).

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

]Note to s. 173
inserted by
No. 45/2018
s. 148(3).

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.

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

Note to s. 174
inserted by
No. 45/2018
s. 149(1).

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.

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

Note to s. 175
inserted by
No. 45/2018
s. 149(2).

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.

Note to s. 176
inserted by
No. 45/2018
s. 149(3).

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

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.

Note to s. 177
inserted by
No. 45/2018
s. 149(4).

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

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.

Note to s. 178
inserted by
No. 45/2018
s. 149(5).

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

178A Caravan park owner must maintain rented site in good repair

**S. 178A
inserted by
No. 45/2018
s. 150.**

A caravan park owner must provide and maintain in good repair any site rented to a resident, including any structures or fixtures owned by the caravan park owner, other than the caravan occupied by the resident.

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

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.
- (1A) If a resident has reported to the caravan park owner damage or breakdown of communal facilities at the caravan park under section 173(2), the caravan park owner must ensure that the damage or breakdown is repaired as soon as practicable.
- (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.

**S. 179(1A)
inserted by
No. 45/2018
s. 151(1).**

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

**Note to s. 179
inserted by
No. 45/2018
s. 151(2).**

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.

Note to s. 180
inserted by
No. 45/2018
s. 152.

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

S. 180A
inserted by
No. 45/2018
s. 153.

180A Caravan park owner's and caravan owner's liability for excessive usage caused by faults

- (1) Subject to subsection (2), if a resident has been charged for excessive usage of a service at the site the resident occupies that is caused by a fault in infrastructure or any fixtures or buildings at or connected to the site or the caravan park, including the caravan, the caravan park owner or the caravan owner, as the case requires, is liable for that part of the excessive charge that is additional to an amount of ordinary usage by the resident.

Example

Excessive usage charges caused by a leak in the underground pipe of a water service connected to a site in a caravan park.

- (2) A caravan park owner or a caravan owner, as the case requires, is not liable for excessive usage charges unless—
 - (a) the resident notified the caravan park owner or the caravan owner, as soon as practicable, of—
 - (i) the excessive usage charges; and
 - (ii) the fault that caused the excessive usage; and

- (b) the fault was not caused by any action or omission of the resident.
- (3) A caravan park owner is not liable for excessive usage charges if the excessive usage charges were caused by a fault with the caravan occupied by the resident which is not owned by the caravan park owner.
- (4) A caravan park owner or caravan owner, as the case requires, must reimburse a resident for any reasonable costs incurred by the resident for the diagnosis of a fault referred to in subsection (1) by a suitably qualified person.
- (5) A caravan park owner or a caravan owner is not responsible for any excess usage charges or other costs for a fault caused by any property that is the responsibility of a service provider.

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

180B Application to Tribunal about excessive usage charges

S. 180B
inserted by
No. 45/2018
s. 153.

- (1) A caravan park owner, a caravan owner or a resident may apply to the Tribunal to determine the liability of the caravan park owner, the caravan owner and the resident for excessive usage charges referred to in section 180A.
- (2) In making a determination under subsection (1), the Tribunal is to have regard to the following—
 - (a) whether the resident had knowledge of the fault;
 - (b) whether the resident took reasonable steps to notify the caravan park owner, the caravan owner, or that person's agent, of the fault;

- (c) whether the resident has already been compensated by another person for any part of the excessive usage charges;
- (d) whether the caravan park owner or the caravan owner has complied with this Act in respect of any urgent repairs;
- (e) any diagnosis made by a water authority or other suitably qualified person in respect of the fault;
- (f) any maintenance and repairs conducted by the caravan park owner or the caravan owner;
- (g) any other matter the Tribunal considers appropriate.

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

S. 181
(Heading)
amended by
No. 45/2018
s. 154(1).

S. 181
amended by
Nos 32/2010
s. 79(4),
45/2018 s. 154
(1)(1A)(2) (as
amended by
No. 47/2019
s. 73).

Note to s. 181
inserted by
No. 45/2018
s. 154(3).

181 Owner must ensure appliances with an efficiency rating system installed

A caravan owner must ensure that, if an appliance, fitting or fixture provided by the caravan owner that uses or supplies water, gas or electricity 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 rating that is of or above a prescribed level of rating in an efficiency rating system.

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

182 Statement of rights and copy of park rules

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: 60 penalty units.

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

S. 182
amended by
Nos 67/2010
s. 127, 45/2018
s. 155(1).

Note to s. 182
inserted by
No. 45/2018
s. 155(2).

183 Statement of scale of certain charges, fees and commissions

- (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: 60 penalty units.

S. 183(1)
amended by
Nos 67/2010
s. 128(1),
45/2018
s. 156(1).

S. 183(2)
amended by
Nos 67/2010
s. 128(2),
45/2018
s. 156(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: 25 penalty units.

Note to s. 183
inserted by
No. 45/2018
s. 156(3).

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

184 Owner to give additional information

S. 184(1)
amended by
Nos 67/2010
s. 129, 45/2018
s. 157(1).

- (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: 25 penalty units.

S. 184(2)
amended by
Nos 67/2010
s. 129, 45/2018
s. 157(1).

- (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: 25 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
Nos 67/2010
s. 129, 45/2018
s. 157(1).

Penalty: 25 penalty units.

- (4) In this section *required day* means a day 7 days after a person becomes a resident of the caravan park.

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

Note to s. 184
inserted by
No. 45/2018
s. 157(2).

185 Caravan park rules

- (1) Subject to subsection (3), a caravan park owner may from time to time make rules relating to the use, enjoyment, control and management of the caravan park.

S. 185(1)
amended by
No. 45/2018
s. 158(1) (as
amended by
No. 47/2019
s. 71).

- (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.

S. 185(3)
inserted by
No. 45/2018
s. 158(2).

- (3) A caravan park owner must not make a caravan park rule that requires a resident to undertake an upgrade or improvement work in relation to a caravan unless the upgrade or work is required to keep the caravan in a reasonable state of cleanliness, safety and good repair.

S. 185(4)
inserted by
No. 45/2018
s. 158(2).

- (4) A caravan park owner must—
- (a) provide a copy of the caravan park rules to a resident before the residency commences; and
 - (b) take all reasonable steps to ensure that the caravan park rules are observed by all residents; and
 - (c) ensure that the caravan park rules—
 - (i) are reasonable; and
 - (ii) are enforced and interpreted consistently and fairly.

S. 185(5)
inserted by
No. 45/2018
s. 158(2).

- (5) Rules made in contravention of this section are invalid.

Note to s. 185
inserted by
No. 45/2018
s. 158(2).

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

186 Duties relating to caravan park rules

S. 186(1)
amended by
Nos 67/2010
s. 130, 45/2018
s. 159(1).

- (1) A caravan park owner must give the resident at least 7 days written notice of any proposed change in the caravan park rules.

Penalty: 25 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.

(3) A caravan park owner must consult with the residents in the caravan park about a proposed change to the caravan park rules.

Penalty: 60 penalty units.

S. 186(3)
inserted by
No. 45/2018
s. 159(2) (as
amended by
No. 47/2019
s. 72).

(4) A caravan park owner is taken to have consulted with the residents in accordance with this section if the owner has—

S. 186(4)
inserted by
No. 45/2018
s. 159(2) (as
amended by
No. 47/2019
s. 72).

(a) provided details of the proposed amendment to the caravan park rules in writing to the residents; and

(b) allowed at least 14 days for the residents to respond in writing; and

(c) considered and responded in writing to any written responses received from the residents.

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

Note to s. 186
inserted by
No. 45/2018
s. 159(3).

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 7 days written notice of the repairs carried out and the cost; and

S. 188(2)(a)
amended by
No. 45/2018
s. 160(1)(a).

- (b) the caravan park owner or caravan owner is liable to reimburse the resident for the reasonable cost of the repairs, 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. 188(2)(b) amended by Nos 67/2010 s. 169(1), 45/2018 s. 160(1)(b).**
- (c) the caravan park owner or the caravan owner (as the case requires) must reimburse the resident within 7 days after receiving written notice of— **S. 188(2)(c) inserted by No. 45/2018 s. 160(1)(c).**
- (i) the repairs; and
- (ii) the cost of the repairs.
- (3) If urgent repairs are required to an appliance, fitting or fixture with a rating that is of or above a prescribed level of rating in a prescribed efficiency rating system, and the appliance, fitting or fixture cannot be repaired, the resident may replace it with an appliance, fitting or fixture with a rating that is of or above a prescribed level of rating in the efficiency rating system. **S. 188(3) substituted by Nos 32/2010 s. 79(5), 45/2018 s. 160(2) (as amended by No. 47/2019 s. 74).**
- (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.

S. 188A
inserted by
No. 45/2018
s. 161 (as
amended by
No. 47/2019
s. 75).

188A Urgent site repairs

- (1) A resident may cause urgent site repairs to be carried out if—
 - (a) the resident has taken reasonable steps to arrange for the caravan park owner, or that person's agent, to immediately carry out the urgent site repairs; and
 - (b) the caravan park owner, or that person's agent, did not carry out those repairs.
- (2) If the resident carries out repairs under subsection (1)—
 - (a) the resident must give the caravan park owner or the caravan owner 7 days written notice of—
 - (i) the repairs carried out; and
 - (ii) the cost of the repairs; and
 - (b) the caravan park owner or that person's agent is liable to reimburse the resident for the reasonable cost of the repairs, or a prescribed greater amount (which includes any amount in respect of any GST payable on the supply to which the urgent site repairs relate), whichever is less.
- (3) If urgent site repairs are required to an item that uses or supplies water, electricity or gas and that item does not have a rating that is of or above a prescribed level of rating in a prescribed efficiency 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 the efficiency rating system.
- (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.

189 Application to the Tribunal for urgent caravan repairs

S. 189
(Heading)
inserted by
No. 45/2018
s. 162(1).

- (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 the 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.
- (3) Without limiting the matters to which the Tribunal may consider, the Tribunal must consider the Director's guidelines in determining an application under this section.

S. 189(1)(b)
amended by
Nos 67/2010
s. 169(2),
45/2018
s. 162(2).

S. 189(3)
inserted by
No. 45/2018
s. 162(3).

189A Application to Tribunal for urgent site repairs

S. 189A
inserted by
No. 45/2018
s. 163.

- (1) A resident may apply to the Tribunal for an order requiring the caravan park owner, or that person's agent, to carry out specified urgent site repairs if—
- (a) the resident cannot pay the cost of the repairs; or

- (b) the repairs cost more than a 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 has refused to pay the cost of the urgent site 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 to which the Tribunal may consider, the Tribunal must consider the Director's guidelines in determining an application under this section.

S. 190
(Heading)
inserted by
No. 45/2018
s. 164(1).

190 Application to Director to investigate need for non-urgent caravan 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) may investigate; and

S. 190(3)(a)
amended by
No. 45/2018
s. 164(2)(a).

- (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) may issue a report that—
 - (i) certifies that the caravan park owner or the caravan owner is in breach of the duty to maintain the caravan in good repair; and
 - (ii) directs the caravan park owner or the caravan owner to do anything necessary to comply with the duty, including specifying a reasonable time for the completion of repairs, if any.
- (4) If the Director has issued a report stating that the caravan park owner or the caravan owner is in breach of the duty to maintain the caravan in good repair, the resident may apply in writing to a court or the Tribunal for an order directing the caravan owner to comply with any requirements of the Director in the report.
- (5) On an application under section 190(4), a court or the Tribunal—
 - (a) may order the caravan owner to comply with the requirements of the Director in the report the subject of the application, including requiring the caravan owner to cause any repairs to be completed within the specified time; and
 - (b) may make any other orders the court or Tribunal thinks fit.

S. 190(3)(c)
substituted by
No. 45/2018
s. 164(2)(b).

S. 190(4)
inserted by
No. 45/2018
s. 164(3).

S. 190(5)
inserted by
No. 45/2018
s. 164(3).

Note

Section 506(1)(da) provides that a document to be served on or given to a person under this Act may be served or given by electronic communication in accordance with the **Electronic Transactions (Victoria) Act 2000**.

S. 190A
inserted by
No. 45/2018
s. 165.

190A Application to Director to investigate need for non-urgent site repairs

- (1) A resident may apply to the Director to investigate whether the caravan park owner is in breach of a duty to ensure the site which the resident occupies, or a structure or a fixture owned by the caravan park owner on the site, is maintained in good repair if—
 - (a) the resident has given notice to the caravan park owner that site repairs (other than urgent site repairs) are required—
 - (i) to the site which the resident occupies; or
 - (ii) any structure or a fixture owned by the caravan park owner on the site; and
 - (b) the caravan park owner has not carried out the site 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) may investigate; and
 - (b) may negotiate arrangements for the carrying out of site repairs if the Director is satisfied that the caravan park owner is in breach of the duty to maintain in good repair the site, or a structure or a fixture in the caravan park owned by the caravan park owner; and
 - (c) may 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 given written notice to the caravan owner that non-urgent repairs are required to the caravan; and

S. 191(1)(a)
substituted by
No. 45/2018
s. 166(1)

(b) the caravan owner has not caused the repairs to be carried out within 14 days after being given notice referred to in paragraph (a).

S. 191(1)(b)
substituted by
No. 45/2018
s. 166(1)

(2) An application under subsection (1) must be heard by the Tribunal within 7 days after the application is made.

S. 191(2)
repealed by
No. 52/1998
s. 236(i),
new s. 191(2)
inserted by
No. 45/2002
s. 52(1),
substituted by
No. 45/2018
s. 166(2).

* * * *

S. 191(3)
repealed by
No. 52/1998
s. 236(i).

* * * *

S. 191(4)
amended by
No. 45/2002
s. 52(2),
repealed by
No. 45/2018
s. 166(3).

191A Application to Tribunal for non-urgent site repairs

(1) A resident may apply to the Tribunal for an order requiring the caravan park owner to carry out specified site repairs if—

(a) the resident has given written notice to the caravan park owner that non-urgent repairs are required to the site; and

S. 191A
inserted by
No. 45/2018
s. 167.

(b) the caravan park owner has not caused the repairs to be carried out within 14 days after being given notice referred to in paragraph (a).

(2) An application under subsection (1) must be heard by the Tribunal within 7 days after the application is made.

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.

S. 192(1A)
inserted by
No. 45/2018
s. 168(1).

(1A) The Tribunal may make an order requiring the caravan park owner to carry out specified site repairs if it is satisfied that the caravan park owner is in breach of the duty to maintain in good repair the site, or a structure or fixture on the site owned by the caravan park owner.

S. 192(1B)
inserted by
No. 45/2018
s. 168(1).

(1B) The Tribunal may make an order requiring repairs to be carried out by a suitably qualified person.

S. 192(1C)
inserted by
No. 45/2018
s. 168(1).

(1C) The Tribunal may make an order requiring the payment of compensation.

S. 192(1D)
inserted by
No. 45/2018
s. 168(1).

(1D) Without limiting the matters to which the Tribunal may have regard in determining an application under section 189, 189A, 191 or 191A, the Tribunal must have regard to the following—

- (a) whether the repair is required because of—
 - (i) an act or omission by the resident; or

- (ii) non-compliance by the resident with the agreement in respect of the residency right or the resident's duties under section 173;
 - (b) whether the caravan owner or caravan park owner (as the case requires) or that person's agent received notice of the fault requiring repair;
 - (c) if the caravan owner or caravan park owner or that person's agent received notice of the fault requiring repair, whether the caravan owner or caravan park owner was given a reasonable opportunity by the resident to make the repair;
 - (d) whether the resident arranged for a suitably qualified person to carry out any repairs;
 - (e) whether the caravan owner or caravan park owner is required to arrange for a suitably qualified person to verify the quality of any repair;
 - (f) whether the resident has provided documentary evidence to the Tribunal of repairs, including the cost of repairs.
- (2) An order made under subsection (1) or (1A) must specify the repairs and the time within which they must be carried out.

S. 192(2)
amended by
No. 45/2018
s. 168(2).

193 Payment of rent or hiring charge into Rent Special Account

S. 193
(Heading)
inserted by
No. 45/2018
s. 169(1).

- (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.

S. 193(1A)
inserted by
No. 45/2018
s. 169(2).

(1A) If a resident has given notice under section 190A requiring repairs to be carried out to a site the resident may apply to the Tribunal for an order authorising the payment of the rent into the Rent Special Account.

S. 193(2)
amended by
No. 45/2018
s. 169(3)(a)(c).

(2) The Tribunal must make an order authorising the resident to pay the hiring charge or 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 caravan park owner or the caravan owner in accordance with this Act; and

S. 193(2)(ab)
inserted by
No. 45/2018
s. 169(3)(b).

(ab) the caravan park owner or caravan owner has not demonstrated that the caravan park owner or caravan owner, as the case requires—

(i) is experiencing financial hardship; or

(ii) would experience financial hardship if the rent or hiring charge was paid into the Rent Special Account; and

(b) the caravan park owner or caravan owner has failed to comply with the duty to carry out the repairs.

S. 193(2A)
inserted by
No. 45/2018
s. 169(4).

(2A) In determining whether a caravan park owner or a caravan owner has demonstrated that the owner has experienced or would experience financial hardship for the purposes of subsection (2), the Tribunal may have regard to any of the following—

(a) an eviction notice given to the owner;

(b) a disconnection notice in respect of a service or utility account held by the owner;

(c) a notice of legal proceedings issued against the owner;

- (d) a letter from a non-profit organisation about the owner's loss of employment or financial hardship;
 - (e) a notice from a lender to the owner, including—
 - (i) an overdraft call; or
 - (ii) a repossession notice in respect of a mortgaged property;
 - (f) outstanding medical bills of the owner;
 - (g) a letter from a doctor in respect of the impact of the owner's illness or carer's responsibility on the ability of the owner to earn an income;
 - (h) a final notice from a school to the owner in respect of the payment of mandatory schooling fees;
 - (i) funeral expenses payable by the owner;
 - (j) a repossession notice served on the owner in respect of an essential item;
 - (k) a hardship variation, or a written request to vary the terms of an existing loan held by the owner;
 - (l) any other prescribed document.
- (3) If an order is made under subsection (2)—
- (a) the amount of the hiring charge or rent held in the Rent Special Account at the end of that period must be paid to the caravan park owner or caravan owner; and **S. 193(3)(a) amended by No. 45/2018 s. 169(5).**
 - (b) on an application by the caravan park owner or the caravan owner, the Tribunal may order that the whole, or such part of the hiring charge or rent as it may determine, be paid to the caravan park owner or caravan owner **S. 193(3)(b) substituted by No. 45/2018 s. 169(6).**

(as the case requires) before the end of the period—

(i) on the agreement of both of the parties;
or

(ii) if the Tribunal is satisfied that the owner has fulfilled or is fulfilling the owner's duty to carry out the repairs.

S. 193(4)
inserted by
No. 45/2018
s. 169(7).

(4) A resident may apply to the Tribunal for an order directing that all or part of the amount of a hiring charge or rent be repaid to the resident if—

(a) on an order under subsection (2), the hiring charge or rent has been paid into the Rent Special Account in relation to a breach of section 178A or 180; and

(b) the caravan park owner or caravan owner has failed to effect repairs by the end of the period stated in the order.

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.

Pt 4 Div. 7
(Heading)
amended by
No. 45/2018
s. 170.

Division 7—Transfer of rights and sale of caravans

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.

S. 195(1A)
inserted by
No. 45/2018
s. 171(1).

(1A) In addition to subsection (1), if a caravan with a serious defect that is owned by a resident is being sold at the site occupied by the resident, the caravan park owner may consent to the transfer of the resident's residency right, subject to an

undertaking that works to rectify the serious defect will be made to the caravan within a reasonable time.

(1B) An undertaking referred to in subsection (1A) may be made by—

**S. 195(1B)
inserted by
No. 45/2018
s. 171(1).**

(a) the vendor of the caravan; or

(b) the purchaser of the caravan.

(1C) If an undertaking referred to in subsection (1A) has been given to the caravan park owner but the works to rectify the serious defect are not completed within a reasonable time, the caravan park owner may apply to the Tribunal under section 452(3) for an order that the person who made the undertaking is to complete the works within a reasonable time.

**S. 195(1C)
inserted by
No. 45/2018
s. 171(1).**

(2) Subject to subsection (2A), a caravan park owner must not unreasonably withhold consent to a transfer under subsection (1) or (1A).

**S. 195(2)
amended by
No. 45/2018
s. 171(2).**

(2A) A caravan park owner may reasonably withhold consent under subsection (1A) if—

**S. 195(2A)
inserted by
No. 45/2018
s. 171(3).**

(a) the caravan being sold has a serious defect; and

(b) no undertaking has been given to the caravan park owner to rectify the defect.

(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

S. 198(1)
amended by
Nos 67/2010
s. 131(1),
45/2018
s. 172(1).

(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.

Penalty: 25 penalty units.

- (2) Subject to subsection (3), 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
Nos 67/2010
s. 131(2),
45/2018
s. 172(2)(3).

Penalty: 150 penalty units in the case of a
natural person;

750 penalty units in the case of a
body corporate.

- (3) For the purpose of subsection (2), a caravan park owner does not hinder or obstruct the sale of a caravan owned by a resident if—

S. 198(3)
inserted by
No. 45/2018
s. 172(4).

(a) the caravan park owner refuses consent to
transfer the residency right under
section 195(1A); and

(b) the caravan has a serious defect; and

(c) no undertaking has been given to the caravan
park owner to rectify the serious defect.

Division 7A—Residents committees

Pt 4 Div. 7A
(Heading and
ss 198A,
198B)
inserted by
No. 45/2018
s. 176 (as
amended by
No. 47/2019
s. 76).

198A Participation in residents committee

S. 198A
inserted by
No. 45/2018
s. 176 (as
amended by
No. 47/2019
s. 76).

- (1) A resident is entitled to participate in
any residents committee formed for the caravan
park in which the person resides.
- (2) If a site tenants committee for a Part 4A park has
already been formed for the caravan park in which
a resident resides, the resident is entitled to
participate in the site tenants committee.

S. 198B
inserted by
No. 45/2018
s. 176 (as
amended by
No. 47/2019
s. 76).

198B Caravan park owner's duties to residents committees

- (1) A caravan park owner must not unreasonably interfere with a resident's right to participate in a residents committee.

Penalty: 60 penalty units.
- (2) A caravan park owner must allow residents to use suitable communal park facilities for meetings of a residents committee.
- (3) A caravan park owner must consult with a residents committee about the following—
 - (a) any proposed change to the caravan park rules;
 - (b) any proposal to remove or substantially restrict a facility or service available within the park;
 - (c) any proposal to provide a new facility or service within the park.
- (4) A caravan park owner is taken to have consulted with a residents committee in respect of a matter referred to in subsection (3) if the caravan park owner—
 - (a) has provided details of the proposal in writing to the committee; and
 - (b) has allowed at least 14 days for the committee to respond in writing; and
 - (c) has considered and responded in writing to any written response received from the committee.
- (5) The duty of a caravan park owner under subsection (3) is in addition to any other duty of the caravan park owner to consult with residents under this Act.

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 206AP; or

S. 199(c)
amended by
No. 45/2018
s. 240A(Sch. 1
item 2) (as
amended by
No. 47/2019
ss 83, 90).

- (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 206AP; or

S. 200(b)
amended by
No. 45/2018
s. 240A(Sch. 1
item 3) (as
amended by
No. 47/2019
ss 83, 90).

- (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).

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

Note to s. 204
inserted by
No. 45/2018
s. 173.

205 What if damage is caused during entry?

- (1) If a caravan park owner or the caravan owner, or that person's agent, exercises a right of entry under section 199 or 200, a resident of a caravan park may apply to the Tribunal for an order for

S. 205(1)
substituted by
No. 45/2018
s. 174.

compensation if any person causes damage to or loss of the resident's goods in the caravan or on the site.

(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

S. 206A
inserted by
No. 45/2002
s. 53,
amended by
Nos 67/2010
s. 132, 45/2018
s. 175.

resident otherwise than in accordance with this Division.

Penalty: 25 penalty units.

Division 9—Termination of residency rights in caravan parks

Subdivision 1—When does a residency right end?

206AB 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.

206AC 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.

206AD 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.

206AE Termination by abandonment

A residency right ends if the resident abandons the site or caravan.

Pt 4 Div. 9
(Headings
and ss
206AB–
206AZP)
inserted by
No. 45/2018
s. 238 (as
amended by
No. 1/2021
s. 96).

S. 206AB
inserted by
No. 45/2018
s. 238 (as
amended by
No. 1/2021
s. 96).

S. 206AC
inserted by
No. 45/2018
s. 238 (as
amended by
No. 1/2021
s. 96).

S. 206AD
inserted by
No. 45/2018
s. 238 (as
amended by
No. 1/2021
s. 96).

S. 206AE
inserted by
No. 45/2018
s. 238 (as
amended by
No. 1/2021
s. 96).

S. 206AF
inserted by
No. 45/2018
s. 238 (as
amended by
No. 1/2021
s. 96).

206AF Offences relating to interference with rights

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: 150 penalty units in the case of a natural person;

750 penalty units in the case of a body corporate.

**Subdivision 2—Termination and new residency
rights in caravan parks because of family violence
or personal violence**

**206AG Application for termination or new agreement
because of family violence or personal violence**

S. 206AG
inserted by
No. 45/2018
s. 238 (as
amended by
No. 1/2021
s. 96).

- (1) A person specified in subsection (2) may apply to the Tribunal for—
 - (a) an order terminating the existing agreement under section 144; or
 - (b) an order—
 - (i) terminating the existing agreement under section 144; and
 - (ii) requiring the caravan park owner or caravan owner (as the case may be) to enter into a new agreement under section 144 with the persons and other persons (if any) specified in the application.
- (2) For the purposes of subsection (1), the following persons are specified—
 - (a) a party to the existing agreement under section 144 who—
 - (i) has been or is being subjected to family violence by another party to the existing agreement; or
 - (ii) is a protected person under a personal safety intervention order made against another party to the existing agreement;
 - (b) a person—
 - (i) who is residing on the site or occupying a caravan as the person's principal place of residence; and

- (ii) who is not a party to the agreement under section 144; and
 - (iii) who—
 - (A) has been or is being subjected to family violence by a party to the existing agreement; or
 - (B) is a protected person under a personal safety intervention order made against a party to the existing agreement.
- (3) For the purposes of subsection (2), a reference to a person who has been or is being subjected to family violence includes a person who is a protected person under a family violence safety notice, family violence intervention order or recognised non-local DVO.
- (4) An application under subsection (1) may be made without the consent of the caravan park owner or caravan owner (as the case may be) or any other party to the existing agreement under section 144.
- (5) If a person specified in subsection (2) is a child, an application under subsection (1) may be made on that child's behalf by a parent or guardian of the child who lives in the caravan or at the caravan park (as the case may be) with the child.
- (6) For the purposes of a proceeding in relation to an application for an order under subsection (1), each of the following persons is a party to the proceeding—
 - (a) the applicant or a person on whose behalf the application was made;
 - (b) the caravan park owner or caravan owner (as the case may be);

- (c) any resident who is excluded from the site, caravan or caravan park under a family violence safety notice, family violence intervention order, recognised non-local DVO or personal safety intervention order that protects a person specified in subsection (2);
 - (d) any other existing residents of the site or caravan.
- (7) 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.

206AH Tribunal orders

- (1) On an application under section 206AG(1)(a), if satisfied as to the matters set out in subsection (1B), the Tribunal may make an order terminating the existing agreement under section 144.
- (1A) On an application under section 206AG(1)(b), if satisfied as to the matters set out in subsection (2), the Tribunal may make an order—
 - (a) terminating the existing agreement under section 144; and
 - (b) requiring the caravan park owner or caravan owner (as the case may be) to enter into a new agreement under section 144 with the person and other persons (if any) referred to in the application.

**S. 206AH
inserted by
No. 45/2018
s. 238 (as
amended by
No. 1/2021
s. 96).**

(1B) For the purposes of subsection (1), the matters are—

- (a) the specified person or that person's dependent children would be likely to suffer severe hardship if the agreement under section 144 were not terminated; and
- (b) the hardship suffered by the specified persons would be greater than any hardship the caravan park owner or caravan owner (as the case may be) would suffer if the order were made; and
- (c) if a resident is excluded from the site, caravan or caravan park under a family violence safety notice, family violence intervention order, recognised non-local DVO or personal safety intervention order, it is reasonable to do so given the length of the exclusion under the notice or order and the length of the existing agreement under section 144; and
- (d) it is reasonable to do so given the interests of any other residents (other than any excluded resident) under the existing agreement under section 144 and, in particular, whether the other residents support the specified person's application.

(2) For the purposes of subsection (1A), the matters are—

- (a) the specified person and other persons (if any) could reasonably be expected to comply with the duties of a resident under an agreement under section 144; and

- (b) the specified person or that person's dependent children would be likely to suffer severe hardship if the specified person were compelled to leave the site, caravan or caravan park; and
 - (c) the hardship suffered by the specified person would be greater than any hardship the caravan park owner or caravan owner (as the case may be) would suffer if the order were made; and
 - (d) if a resident is excluded from the site, caravan or caravan park under a family violence safety notice, family violence intervention order, recognised non-local DVO or personal safety intervention order, it is reasonable to do so given the length of the exclusion under the order or notice and the length of the existing agreement under section 144; and
 - (e) it is reasonable to do so given the interests of any other residents (other than any excluded resident) under the existing agreement under section 144 and, in particular, whether the other residents support the specified person's application.
- (3) In determining an application under section 206AG(1), the Tribunal must take into account the following matters in relation to family violence or personal violence—
- (a) whether an application for a family violence safety notice, family violence intervention order, non-local DVO or personal safety intervention order has been made by or in respect of the specified person;

- (b) if an application for a family violence intervention safety notice, family violence intervention order, non-local DVO or personal safety intervention order has been made by or in respect of the person—
 - (i) whether there is a family violence safety notice, family violence intervention order, recognised non-local DVO or personal safety intervention order in effect; and
 - (ii) if there is a notice or an order in effect, whether a resident is excluded from the site, caravan or caravan park under the notice or order;
 - (c) any prescribed matters;
 - (d) any other matter the Tribunal considers relevant.
- (4) If the Tribunal makes an order under subsection (1A), the new agreement under section 144—
- (a) is subject to the same rent and frequency of rent payments as the existing agreement; and
 - (b) if the existing agreement is for a specified period of occupancy, runs for a term not longer than the remainder of that specified period; and
 - (c) otherwise, is on the same terms and conditions as the existing agreement, subject to any changes the Tribunal determines.
- (5) If the Tribunal makes an order under subsection (1), the Tribunal must specify the date on which the existing agreement under section 144 terminates.

- (6) If the Tribunal makes an order under subsection (1A), the existing agreement under section 144 is terminated on the signing of the new agreement.
- (7) If the Tribunal makes an order under subsection (1) or (1A), it may also make the following orders—
 - (a) an order that the caravan park owner or caravan owner (as the case may be) must ensure that the specified person has access to the caravan and caravan park to remove the person's goods;
 - (b) an order that caravan park owner or caravan owner (as the case may be) must not list information about the person on a residential tenancy database within the meaning of Part 10A.
- (8) In this section—

specified person means a person specified in section 206AG(2).

206AI Tribunal may determine parties' liability under terminated agreement

S. 206AI
inserted by
No. 45/2018
s. 238 (as
amended by
No. 1/2021
s. 96).

- (1) If the Tribunal decides to make an order under section 206AH(1) or (1A), the Tribunal may determine the liability of any of the following persons in relation to any of the matters specified in subsection (2)—
 - (a) a resident who is excluded from a site, caravan or caravan park under—
 - (i) a family violence safety notice; or
 - (ii) a family violence intervention order; or
 - (iii) a recognised non-local DVO; or
 - (iv) a personal safety intervention order;

- (b) a person specified in section 206AG(2);
 - (c) any other resident under the existing agreement under section 144.
- (2) For the purposes of subsection (1), the specified matters are—
- (a) liabilities relating to outstanding rent; and
 - (b) liabilities relating to damage caused to the site, caravan or caravan park; and
 - (c) liabilities relating to outstanding utility charges.
- (3) To remove doubt, the termination of an agreement under section 206AH 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.

S. 206AJ
inserted by
No. 45/2018
s. 238 (as
amended by
No. 1/2021
s. 96).

206AJ Cross-examination in a proceeding for termination or new agreement

- (1) Unless the Tribunal gives leave, in a proceeding on an application under section 201AG(1)—
- (a) a person subjected to family violence must not be personally cross-examined by the person who subjected that person to the family violence; and
 - (b) a protected person under a personal safety intervention order must not be personally cross-examined by the person against whom the personal safety intervention order was made.
- (2) For the purposes of subsection (1), a reference to a person subjected to family violence includes a protected person under a family violence safety notice, family violence intervention order or recognised non-local DVO.

- (3) The Tribunal may give leave under subsection (1) with or without conditions.
- (4) If leave is given under subsection (1), the resident may only cross-examine the person subjected to family violence or the protected person—
 - (a) as to those matters set out in section 206AH(2), in the case of an application under section 206AG(1)(b); and
 - (b) as to those matters set out in section 206AH(1B), in the case of an application under section 206AG(1)(a); and
 - (c) in accordance with any conditions to which the leave granted is subject.

Subdivision 3—Notice of intention to vacate or abandonment by resident

206AK 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.

S. 206AK
inserted by
No. 45/2018
s. 238 (as
amended by
No. 1/2021
s. 96).

206AL 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.

S. 206AL
inserted by
No. 45/2018
s. 238 (as
amended by
No. 1/2021
s. 96).

(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.

S. 206AM
inserted by
No. 45/2018
s. 238 (as
amended by
No. 1/2021
s. 96).

206AM Rent or hiring charge payable on termination without notice

(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.

Penalty: 25 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.

Penalty: 25 penalty units.

S. 206AN
inserted by
No. 45/2018
s. 238 (as
amended by
No. 1/2021
s. 96).

206AN 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.

206AO Abandonment of site or caravan

S. 206AO
inserted by
No. 45/2018
s. 238 (as
amended by
No. 1/2021
s. 96).

- (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 the resident to return.

206AP Order of abandonment

S. 206AP
inserted by
No. 45/2018
s. 238 (as
amended by
No. 1/2021
s. 96).

- (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 4—Notice by caravan park owner, caravan owner or caravan mortgagee

S. 206AQ
inserted by
No. 45/2018
s. 238 (as
amended by
No. 1/2021
s. 96).

206AQ Damage

- (1) A caravan park owner may give a resident a notice to vacate a site if the resident or the resident's visitor, whether by act or omission, intentionally or recklessly causes serious damage to—
 - (a) the site; or
 - (b) the caravan park, including any common areas; or
 - (c) any facility in the caravan park, including any safety equipment.

Example

Safety equipment such as smoke alarms.

- (2) A caravan owner may give a resident a notice to vacate a caravan if the resident or a resident's visitor, whether by act or omission, intentionally or recklessly causes serious damage to a caravan hired from a caravan owner, including any safety equipment.

Example

Safety equipment such as smoke alarms.

- (3) The notice may specify a termination date that is the date on which the notice is given or a later date.

206AR Danger

S. 206AR
inserted by
No. 45/2018
s. 238 (as
amended by
No. 1/2021
s. 96).

- (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 endangers the safety of—
- (a) any person or property in the caravan park;
or
 - (b) the caravan park owner or the owner's agent;
or
 - (c) a contractor or employee of a person referred to in paragraph (b).
- (2) The notice may specify a termination date that is the date on which the notice is given or a later date.
- (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.

206AS Threats and intimidation

S. 206AS
inserted by
No. 45/2018
s. 238 (as
amended by
No. 1/2021
s. 96).

- (1) A caravan park owner may give a resident a notice to vacate a site if the resident or any other person residing at the site occupied by the resident has seriously threatened or intimidated—

- (a) the caravan park owner or the owner's agent;
or
- (b) a contractor or employee of a person referred
to in paragraph (a).

- (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. 206AT
inserted by
No. 45/2018
s. 238 (as
amended by
No. 1/2021
s. 96).

206AT 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.

S. 206AU
inserted by
No. 45/2018
s. 238 (as
amended by
No. 1/2021
s. 96).

206AU 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.

S. 206AV
inserted by
No. 45/2018
s. 238 (as
amended by
No. 1/2021
s. 96).

206AV 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.

S. 206AW
inserted by
No. 45/2018
s. 238 (as
amended by
No. 1/2021
s. 96).

206AW 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.

206AX Successive breaches by resident

S. 206AX
inserted by
No. 45/2018
s. 238 (as
amended by
No. 1/2021
s. 96).

- (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 if—
- (a) the resident has breached a duty provision;
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.
- (2) If the caravan park owner or caravan owner gives a breach of duty notice to the resident in respect of the breach of a duty provision, 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.
- (3) The notice must specify a termination date that is not less than 7 days after the date on which the notice is given.

206AY Use of site or caravan for illegal purpose

S. 206AY
inserted by
No. 45/2018
s. 238 (as
amended by
No. 1/2021
s. 96).

- (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.

S. 206AZ
inserted by
No. 45/2018
s. 238 (as
amended by
No. 1/2021
s. 96).

206AZ 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.
- (2) 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.
- (3) 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 (2), 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.
- (4) 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.
- (5) 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.

- (6) 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 (5), 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.
- (7) 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.
- (8) 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.

206AZA 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.
- (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.

S. 206AZA
inserted by
No. 45/2018
s. 238 (as
amended by
No. 1/2021
s. 96).

- (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).

S. 206AZB
inserted by
No. 45/2018
s. 238 (as
amended by
No. 1/2021
s. 96).

206AZB

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 personally occupy the caravan; or
 - (b) the caravan owner intends to make it available for occupation by—
 - (i) the owner's partner, child, parent or partner's parent; or
 - (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.

206AZC Prohibition on hiring of caravans or renting of sites after notice

S. 206AZC
inserted by
No. 45/2018
s. 238 (as
amended by
No. 1/2021
s. 96).

- (1) A caravan park owner must not rent a site vacated under section 206AZ or 206AZA for 6 months after the site is vacated.

Penalty: 150 penalty units in the case of a natural person;
750 penalty units in the case of a body corporate.

- (2) A caravan owner must not hire out a caravan vacated under section 206AZ or 206AZB for 6 months after the caravan is vacated.

Penalty: 150 penalty units in the case of a natural person;
750 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 206AZB and the caravan is hired out to a person referred to in that section.

206AZD Notice under agreement with specified period of occupancy

S. 206AZD
inserted by
No. 45/2018
s. 238 (as
amended by
No. 1/2021
s. 96).

- (1) A caravan park owner, before the end of a specified period of occupancy in an agreement under section 144, may give a resident a notice to vacate a site at the end of the specified period.

- (2) A caravan owner, before the end of a specified period of occupancy in an agreement under section 144, may give a resident a notice to vacate a caravan at the end of the specified period.
- (3) The notice to vacate must specify a termination date that is on or after the date of the end of the specified period of occupancy in the agreement under section 144.
- (4) The notice to vacate must specify a termination date that is not less than 60 days after the date on which the notice to vacate is given.

S. 206AZE
inserted by
No. 45/2018
s. 238 (as
amended by
No. 1/2021
s. 96).

206AZE Notice of no effect

- (1) A notice to vacate under section 206AZ, 206AZA, 206AZB and 206AZD(1) or (2) is of no effect if it was given in response to—
 - (a) the exercise, or proposed exercise, by the resident of a right under this Act or the residency right; or
 - (b) the resident making a report under section 173(2).
- (2) A notice to vacate under section 206AS 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 or the residency right.
- (3) A notice to vacate given under section 206AZ, 206AZA, 206AZB and 206AZD(1) or (2) is of no effect if the giving of the notice would constitute direct discrimination within the meaning of the **Equal Opportunity Act 2010**.
- (4) A person is not entitled to apply to the Tribunal challenging the validity of a notice to vacate referred to in subsection (1), (2) or (3) after the end of 60 days after the date on which the notice to vacate is given.

206AZF Notice by caravan park mortgagee

S. 206AZF
inserted by
No. 45/2018
s. 238 (as
amended by
No. 1/2021
s. 96).

- (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.

206AZG Notice by caravan mortgagee

S. 206AZG
inserted by
No. 45/2018
s. 238 (as
amended by
No. 1/2021
s. 96).

- (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.

Subdivision 5—Notices under this Division

S. 206AZH
inserted by
No. 45/2018
s. 238 (as
amended by
No. 1/2021
s. 96).

206AZH

Form of notice of intention to vacate

A notice of intention to vacate a caravan or site in a caravan park is not valid unless—

- (a) it is in writing; and
- (b) it is signed by the person giving the notice or by that person's agent.

S. 206AZI
inserted by
No. 45/2018
s. 238 (as
amended by
No. 1/2021
s. 96).

206AZI

Form of notice to vacate

A notice to vacate a caravan or site in a caravan park given under this Division is not valid unless—

- (a) it is in the relevant prescribed form; and
- (b) it is addressed to the resident; and
- (c) it is signed by the person giving the notice or by that person's agent; and
- (d) it specifies the reason or reasons for giving the notice; and
- (e) in the case of a notice to vacate given under section 206AZ or 206AZB, 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

Note

See section 486A.

- (f) it specifies the termination date which is the date by which compliance is required.

206AZJ 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 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.

S. 206AZJ inserted by No. 45/2018 s. 238 (as amended by No. 1/2021 s. 96).

206AZK How can a notice be withdrawn?

- (1) A notice of intention to vacate or a notice to vacate given under this Division is withdrawn only if a notice of withdrawal is given.
- (2) 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.

S. 206AZK inserted by No. 45/2018 s. 238 (as amended by No. 1/2021 s. 96).

Subdivision 6—Can a notice to vacate be challenged?

206AZL Application of Subdivision

Nothing in this Subdivision affects any right a resident may have to challenge the validity of any other notice to vacate under this Act.

S. 206AZL inserted by No. 45/2018 s. 238 (as amended by No. 1/2021 s. 96).

206AZM Resident may apply to Tribunal

- (1) On or before the hearing of an application for a possession order in respect of a notice to vacate given under section 206AZ, a resident who has received the notice to vacate may apply to the Tribunal challenging the validity of the notice to vacate.

S. 206AZM inserted by No. 45/2018 s. 238 (as amended by No. 1/2021 s. 96).

- (2) An application under subsection (1) must be made within 30 days after the notice to vacate is given.

S. 206AZN inserted by No. 45/2018 s. 238 (as amended by No. 1/2021 s. 96).

206AZN What can the Tribunal order?

- (1) On an application under section 206AZM, the Tribunal may determine whether or not the notice to vacate is valid.
- (2) If the Tribunal determines that the notice to vacate is valid, the resident is not entitled to further apply 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.

S. 206AZO inserted by No. 45/2018 s. 238 (as amended by No. 1/2021 s. 96).

206AZO Resident may challenge notice to vacate on grounds of family violence or personal violence

- (1) On or before the hearing of an application for a possession order, a resident who has received a notice to vacate under section 206AQ, 206AR, 206AS, 206AT, 206AW, 206AX or 206AY may apply to the Tribunal challenging the validity of the notice to vacate on the grounds that the relevant act or breach for which the notice to vacate was given was caused by the act of a person who has subjected the resident to family violence or personal violence.
- (2) An application under subsection (1) must be made within 30 days after the notice to vacate is given.

S. 206AZP inserted by No. 45/2018 s. 238 (as amended by No. 1/2021 s. 96).

206AZP What can the Tribunal order?

On an application under section 206AZO, the Tribunal must make an order that the notice to vacate is invalid if satisfied that—

- (a) the applicant has been, or is being, subjected to family violence or personal violence; and

- (b) the relevant act or breach on which the notice to vacate was given was caused by the act of a person who has subjected the applicant to family violence or personal violence.

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. 206BA
inserted by
No. 45/2018
s. 177.

206BA Site tenant may request co-habitant to be site tenant under site agreement

- (1) A site tenant may request the site owner to consent to a co-habitant of a Part 4A site being made a site tenant under the site agreement.
- (2) The site owner may require the site tenant to reimburse the site owner for any reasonable expenses that are reasonably incurred by the site owner as a result of adding the co-habitant as a site tenant under the site agreement.
- (3) The site owner must not unreasonably withhold consent to a request under subsection (1).
- (4) A site tenant may apply to the Tribunal if the site owner refuses to consent to a co-habitant of the Part 4A site being made a site tenant on the ground that withholding consent is unreasonable.

- (5) In a proceeding on an application under subsection (4), a site owner may make submissions to the Tribunal in respect of—
 - (a) the suitability of the co-habitant; and
 - (b) any other reasons for withholding consent.
- (6) In a proceeding on an application under subsection (4), the Tribunal, if it thinks fit, may order that the co-habitant referred to in the application be added to the site agreement as a site tenant.

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. 206C
inserted by
No. 67/2010
s. 10.

206D Crown land

A site agreement cannot be entered into in relation to Crown land.

S. 206D
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: 150 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.

S. 206E
inserted by
No. 67/2010
s. 10.

S. 206E(2)
amended by
No. 45/2018
s. 178.

S. 206EA
inserted by
No. 45/2018
s. 179.

206EA Site agreements signed by the site tenant but not by the site owner

- (1) Without limiting section 206E(3), if a site tenant has signed a site agreement and given the agreement to the site owner and the site owner has not signed it, the agreement has the same effect as if it were signed by the site owner, if the site owner—
 - (a) accepts rent without reservation; or
 - (b) otherwise acted in part performance of the site agreement.
- (2) A site agreement under subsection (1) takes effect—
 - (a) from the day on which rent was accepted, if the site owner has accepted rent without reservation; or
 - (b) if the site owner has otherwise acted in part performance of the site agreement, from the day on which the act was performed.
- (3) Section 53 of the **Property Law Act 1958** does not prevent a site agreement from having effect under this section.

S. 206F
inserted by
No. 67/2010
s. 10.

206F Terms of site agreement

- (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).
- (4) A term of a site agreement is also invalid if it is a prohibited term or a term that this Act provides must not be included in a site agreement.

S. 206F(4)
inserted by
No. 45/2018
s. 180.

Note

The Tribunal may declare under sections 206G and 472 that a term of site agreement is invalid.

**Note to
s. 206F**
inserted by
No. 45/2018
s. 180.

206FA Prohibited terms—general

S. 206FA
inserted by
No. 45/2018
s. 181 (as
amended by
No. 1/2021
s. 93).

- (1) A site agreement must not include any of the following terms—
- (a) a term that requires the site tenant to take out any form of insurance;
 - (b) a term that exempts the site owner from liability for an act of—
 - (i) the site owner or that person's agent; or
 - (ii) a person acting on behalf of the site owner or that person's agent;
 - (c) a term that provides that if the site tenant contravenes the site agreement, the site tenant is liable to pay—
 - (i) all or part of the remaining rent under the site agreement; or
 - (ii) increased rent; or

- (iii) a penalty; or
 - (iv) liquidated damages;
 - (d) a term that provides that if the site tenant does not contravene the site agreement—
 - (i) the rent is reduced; or
 - (ii) the rent may be reduced; or
 - (iii) the site tenant is to be paid a rebate or other benefit; or
 - (iv) the site tenant may be paid a rebate or other benefit;
 - (e) any other prescribed prohibited term.
- (2) A term in a site agreement must not include a term that requires a party to the agreement to bear any fees, costs or charges incurred by the other party in connection with the preparation of the agreement.

Note

Section 206F provides that terms which must not be included in a site agreement are invalid.

S. 206FB
inserted by
No. 45/2018
s. 181 (as
amended by
No. 1/2021
s. 93).

206FB Offence to include prohibited term in site agreement

- (1) A site owner or site tenant must not prepare or authorise the preparation of a site agreement that contains a term referred to in section 206FA.

Penalty: 25 penalty units.

- (2) If a site agreement contains a prohibited term, that term is void and unenforceable.

S. 206G
inserted by
No. 67/2010
s. 10.

206G Harsh and unconscionable terms

- (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.

206H Minimum terms for site agreements in new parks

S. 206H
inserted by
No. 67/2010
s. 10.

- (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.

206I Site agreement consideration period

S. 206I
inserted by
No. 67/2010
s. 10.

- (1) A site owner must not give a site tenant—
 - (a) a proposed site agreement; or

S. 206I(1)
amended by
No. 45/2018
s. 182.

- (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: 60 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.

S. 206J
inserted by
No. 67/2010
s. 10.

206J Cooling off period

- (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 1A—Discrimination in relation to site agreements

Pt 4A Div. 1A
(Heading and
ss 206JB,
206JC)
inserted by
No. 45/2018
s. 183 (as
amended by
No. 47/2019
s. 77).

206JB Site agreement application forms must include prescribed information

S. 206JB
inserted by
No. 45/2018
s. 183 (as
amended by
No. 47/2019
s. 77).

A site owner or that person's agent must not provide a person with an application form to apply to enter into a site agreement unless the application form includes a statement that contains the prescribed information.

206JC Site owner must not unlawfully discriminate against another person by refusing to let Part 4A site

S. 206JC
inserted by
No. 45/2018
s. 183 (as
amended by
No. 47/2019
s. 77).

- (1) A site owner must not contravene section 52 of the **Equal Opportunity Act 2010** by refusing to let a person a Part 4A site on the basis of an attribute set out in section 6 of that Act.
- (2) A site owner must not instruct or permit that person's agent to refuse to let a person a Part 4A site on the basis of an attribute set out in section 6 of the **Equal Opportunity Act 2010**.

Note

Section 210AA provides that a person may apply to the Tribunal for an order for compensation if the person has suffered a loss as a result of discrimination by the site owner or that person's agent in contravention of this Division.

Pt 4A Div. 1B
(Heading and
ss 206JD–
206JG)
inserted by
No. 45/2018
s. 183 (as
amended by
No. 47/2019
s. 77).

Division 1B—Disclosures and representations prior to entering into site agreements

S. 206JD
inserted by
No. 45/2018
s. 183 (as
amended by
No. 47/2019
s. 77).

206JD Restriction on use of personal information provided by prospective site tenants

A site owner or that person's agent must not use personal information disclosed by a person on an application form to apply to enter into a site agreement unless the use is for—

- (a) the purposes of assessing the person's suitability as a site tenant; or
- (b) another purpose required by this Act.

S. 206JE
inserted by
No. 45/2018
s. 183 (as
amended by
No. 47/2019
s. 77).

206JE Site owner must not request prescribed information from applicants

A site owner or that person's agent must not request a person who applies to enter into a site agreement to disclose the prescribed information.

S. 206JF
inserted by
No. 45/2018
s. 183 (as
amended by
No. 47/2019
s. 77).

206JF Information that site owners must disclose before entering into site agreements

- (1) Before entering into a site agreement, a site owner must disclose the following information to the site tenant—
 - (a) if the site owner has engaged an agent to sell the Part 4A park or Part 4A site or prepared a contract of sale, that there is a proposal to sell the Part 4A park or Part 4A site;
 - (b) if the site owner is not the freehold owner of the land on which the Part 4A park is situated—

- (i) the nature of the site owner's interest in the land; and
 - (ii) any limitations on the site owner's ability to grant interests in the land to the site tenant;
 - (c) if a mortgagee has commenced a proceeding to enforce a mortgage over the Part 4A park or Part 4A site, that a mortgagee is taking action for possession of the Part 4A park or Part 4A site;
 - (d) if the site owner is not the owner of the Part 4A park, that the site owner has a right to let the Part 4A site;
 - (e) if the site is separately metered for the supply of electricity and the Part 4A park or Part 4A site is supplied with electricity from an embedded electricity network, the prescribed details of the embedded electricity network;
 - (f) any other prescribed information in relation to the Part 4A park or Part 4A site.
- (2) A disclosure under this section must be in the form approved by the Director.

206JG Offence to enter into certain agreements about Part 4A park land

- (1) Subject to subsection (2), a site owner who is not the freehold owner of the land on which a Part 4A site is situated must not enter into a site agreement with a site tenant that is for a period of occupancy which exceeds the expiry date of the lease.

Penalty: 60 penalty units.

- (2) For the purpose of subsection (1), an option to extend or renew the lease in the lease held by the site owner is not to be taken into account in determining the expiry date of the lease.

S. 206JG
inserted by
No. 45/2018
s. 183 (as
amended by
No. 47/2019
s. 77).

Note

A site tenant may apply to the Tribunal under section 452(3AD) in respect of a breach to disclose information required under this section.

Division 2—Bonds

206K What is the maximum bond?

S. 206K
inserted by
No. 67/2010
s. 10.

S. 206K(1)
amended by
No. 45/2018
s. 184(1).

- (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
 - (b) the maximum amount of the bond determined under an order in force under section 206M.

Penalty: 60 penalty units.

S. 206K(2)
substituted by
No. 45/2018
s. 184(2).

- (2) Subsection (1) does not apply to a site agreement if the amount of rent payable under the site agreement for one week exceeds the prescribed amount.

206L Application to increase maximum amount of bond

S. 206L
inserted by
No. 67/2010
s. 10.

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.

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. 206M
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—

S. 206N
inserted by
No. 67/2010
s. 10,
amended by
No. 45/2018
s. 185(1) (as
amended by
No. 47/2019
s. 78).

- (a) has paid a bond for the initial site agreement under which the amount of rent payable for one week does not exceed the prescribed amount; and

S. 206N(a)
substituted by
No. 45/2018
s. 185(2) (as
amended by
No. 47/2019
s. 78).

- (b) continues in occupation of the Part 4A site under the subsequent site agreement.

Penalty: 60 penalty units.

206O Condition report

S. 206O
inserted by
No. 67/2010
s. 10.

- (1) Before a site tenant enters into occupation of the Part 4A site, a site owner must 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, including any fixtures or connections to the site, on the day specified in the report.

S. 206O(1)
substituted by
No. 45/2018
s. 186(1).

Penalty: 25 penalty units.

Residential Tenancies Act 1997

No. 109 of 1997

Part 4A—Site agreements and site-tenant owned dwellings

S. 206O(1A)
inserted by
No. 45/2018
s. 186(1).

(1A) For the purposes of subsection (1), a site owner is deemed to give 2 copies of a condition report to the site tenant if the site owner gives the site tenant an electronic copy of the condition report.

S. 206O(1B)
inserted by
No. 45/2018
s. 186(1).

(1B) A condition report must be in the prescribed form.

S. 206O(2)
amended by
No. 45/2018
s. 186(2).

(2) Within 5 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.

S. 206O(3)
inserted by
No. 45/2018
s. 186(3).

(3) A site tenant who is not given a condition report within the period referred to in subsection (1) may complete a condition report and give it to the site owner or that person's agent during the period between inspecting the Part 4A site and 5 business days after entering into occupation of the site.

S. 206O(4)
inserted by
No. 45/2018
s. 186(3).

(4) A copy of the condition report that is completed under subsection (1) or (3) is to be retained by the site owner and the site tenant.

S. 206O(5)
inserted by
No. 45/2018
s. 186(3).

(5) Within 10 days after the end of a site agreement, the site owner or that person's agent must complete the copy of the condition report retained by the site owner or the site tenant under this section—

- (a) in the presence of the other party; or
- (b) in the absence of the other party, if the party has given the absent other party a reasonable opportunity to be present when the condition report is completed.

Note

Section 506(1)(da) provides that a document to be served on or given to a person under this Act may be served or given by electronic communication in accordance with the **Electronic Transactions (Victoria) Act 2000**.

**Note to
s. 206O
inserted by
No. 45/2018
s. 186(3).**

206OA Site owner or site tenant may apply to Tribunal to amend inaccurate or incomplete condition report

**S. 206OA
inserted by
No. 45/2018
s. 187.**

- (1) Within 30 days after a site agreement has commenced, the site owner or site tenant may apply to the Tribunal to amend a statement in a condition report on the basis that the statement is inaccurate or incomplete.
- (2) On an application under subsection (1), the Tribunal may—
 - (a) order that the condition report must be amended; or
 - (b) order that the condition report is not required to be amended.
- (3) This section does not limit the operation of sections 18, 29, 30, 151 and 152 of the Australian Consumer Law (Victoria).

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.
- (1A) A condition report that is given to a site owner is taken to be notice given to the site owner of any defects or outstanding repairs stated in the report.

**S. 206P(1A)
inserted by
No. 45/2018
s. 188(1).**

(2) Subsection (1) does not apply to—

S. 206P(2)(b)
substituted by
No. 45/2018
s. 188(2).

(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) any statement in the report about which the site tenant records a written comment disagreeing with that statement in the copy of the report completed by the site tenant; or

S. 206P(2)(c)
inserted by
No. 45/2018
s. 188(2).

(c) a statement that the site owner has disagreed with in writing on the condition report, if the report was completed by the site owner before it was completed by the site owner.

S. 206Q
inserted by
No. 67/2010
s. 10.

206Q Certain guarantees prohibited

S. 206Q(1)
amended by
No. 45/2018
s. 189.

(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: 60 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

(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, including in accordance with section 206SA(1); 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; and
- (g) any prescribed matters relating to rent, fees and charges under site agreements.

S. 206S
inserted by
No. 67/2010
s. 10.

S. 206S(1)(d)
amended by
No. 45/2018
s. 190(a).

S. 206S(1)(f)
amended by
No. 45/2018
s. 190(b).

S. 206S(1)(g)
inserted by
No. 45/2018
s. 190(c).

- (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.

S. 206SA
inserted by
No. 45/2018
s. 191.

206SA Rent increases in site agreements

- (1) A site agreement may provide that rent under the site agreement may be increased—
- (a) subject to subsection (3), by a fixed amount in accordance with a specified method of calculating the rent increase; or
 - (b) by a non-fixed amount.

Note

A term referred to in subsection (1) may be varied by agreement with the site owner, the subject of an application under section 206G or the subject of an unfair contract term claim under the Australian Consumer Law (Victoria).

- (2) A site owner must not increase the rent payable by a site tenant at intervals of less than 12 months.
- (3) For the purposes of subsection (1)(a), a specified method of calculating a rent increase may refer to multiple methods of calculating a rent increase, based on varying circumstances, provided that only one method applies for each circumstance.

Example

A site agreement may contain a term that the rent will increase each year by 2% or the CPI percentage rate in that year, whichever is higher.

- (4) If rent under a site agreement is to be increased by a fixed amount under subsection (1)(a), the site owner must give at least 28 days written notice of the increase to the site tenant before the day on which rent is increased.

- (5) Notice given under subsection (4) must—
- (a) be in the prescribed form; and
 - (b) specify—
 - (i) the amount of increased rent; and
 - (ii) the method used to calculate the increased rent amount; and
 - (iii) the date from which the increased rent is payable.

Note

A notice may be challenged under section 206G or the Australian Consumer Law (Victoria).

206T Limit on rent in advance

A site owner must not require a site tenant to pay rent more than one month in advance.

Penalty: 60 penalty units.

S. 206T
inserted by
No. 67/2010
s. 10,
amended by
No. 45/2018
s. 192.

206TA Rent payment

- (1) A site owner, or that person's agent, must not require a site tenant to pay rent by a cheque or other negotiable instrument that is post-dated.

Penalty: 60 penalty units.

- (2) A site owner 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 site tenant's bank account) is reasonably available to the site tenant.

Penalty: 60 penalty units.

- (3) Without limiting how rent is paid, a site owner or that person's agent must permit the site tenant to pay the rent by the following payment methods—

S. 206TA
inserted by
No. 45/2018
s. 193.

- (a) the bill paying service known as Centrepay administered by the Department of Human Services of the Commonwealth;
 - (b) any prescribed payment method.
- (4) Without limiting subsection (3), the site owner and the site tenant, by agreement, may change the manner in which rent is payable under the site agreement.
- (5) The site owner, or that person's agent, must give the site tenant information about any costs (including third party transaction fees, direct debit dishonour fees and any other electronic payment facility fees) that the site tenant may incur by using a particular payment method before the site tenant consents to use the payment method.

S. 206U
inserted by
No. 67/2010
s. 10.

206U Receipts for rent

S. 206U(1)
amended by
No. 45/2018
s. 194.

- (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: 25 penalty units.

S. 206U(2)
amended by
No. 45/2018
s. 194.

- (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: 25 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.

**S. 206U(3)
amended by
No. 45/2018
s. 194.**

Penalty: 25 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.

S. 206V
(Heading)
amended by
No. 45/2018
s. 195(1).

206V How much notice is required of non-fixed 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.

S. 206V(4)
repealed by
No. 45/2018
s. 195(2).

* * * * *

- (5) A rent increase in contravention of this section is invalid despite anything to the contrary in the site agreement.
- (6) This section does not apply to a rent increase of a fixed amount under section 206SA(1)(a).

S. 206V(6)
inserted by
No. 45/2018
s. 195(3).

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).
- (5) This section does not apply to a rent increase of a fixed amount under section 206SA(1)(a).

S. 206W(5)
inserted by
No. 45/2018
s. 196.

206X Application to Tribunal about excessive rent

S. 206X
inserted by
No. 67/2010
s. 10.

- (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.

206Z Payment of increased rent pending Tribunal decision

S. 206Z
inserted by
No. 67/2010
s. 10.

- (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.

S. 206ZB
inserted by
No. 67/2010
s. 10.

206ZB Rent must be reduced if services are reduced

- (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,
amended by
No. 45/2018
s. 197.

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: 60 penalty units.

Division 4—Other charges

206ZD Supply of key

- (1) A site owner must not charge an initial fee for the supply of a key or a device, or both if necessary, that enable a site tenant to gain vehicular access to the park.
- (2) A site owner may charge a reasonable fee for the supply of an additional or a replacement key or device requested by the site tenant.
- (3) On termination of the site agreement, a site tenant must return all keys and devices provided by the site owner to the site owner.

S. 206ZD
inserted by
No. 67/2010
s. 10,
substituted by
No. 45/2018
s. 198.

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.
- (3) A site tenant is liable for all charges in respect of installation and connection of services from a supply point on the site occupied by the site tenant to the dwelling occupied by the site tenant.

S. 206ZE
inserted by
No. 67/2010
s. 10.

S. 206ZE(3)
inserted by
No. 45/2018
s. 199.

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;

S. 206ZF
inserted by
No. 67/2010
s. 10.

S. 206ZF(ab)
inserted by
No. 45/2018
s. 200(1).

- (ab) all rates, taxes or charges payable under any Act other than charges payable by the site tenant under this Division;
- (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;

S. 206ZF(d)
amended by
No. 45/2018
s. 200(2).

- (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;

S. 206ZF(e)
inserted by
No. 45/2018
s. 200(3).

- (e) any prescribed fees and charges.

S. 206ZG
inserted by
No. 67/2010
s. 10.

206ZG Reimbursement

- (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.

S. 206ZH(1)
amended by
No. 45/2018
s. 201(1).

Penalty: 60 penalty units.

- (2) If the relevant supplier of the utility has issued an account of utility charges to the site owner, any amount to be recovered from the site tenant for the account must be adjusted by deducting any concession or rebate to which the site tenant is entitled.

S. 206ZH(2)
substituted by
No. 45/2018
s. 201(2).

- (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

206ZI Site tenant's use of site

S. 206ZI
inserted by
No. 67/2010
s. 10.

- (1) Subject to subsection (1A), a site tenant must use the Part 4A site for residential purposes only and in accordance with the site agreement.

S. 206ZI(1)
substituted by
No. 45/2018
s. 202(1).

Residential Tenancies Act 1997
No. 109 of 1997
Part 4A—Site agreements and site-tenant owned dwellings

S. 206ZI(1A)
inserted by
No. 45/2018
s. 202(1).

(1A) A site tenant may use the Part 4A site for a non-residential purpose if the site owner has given written consent to the site tenant to use the Part 4A site for the non-residential purpose.

S. 206ZI(1B)
inserted by
No. 45/2018
s. 202(1).

(1B) A site owner must not unreasonably withhold consent under subsection (1A).

S. 206ZI(1C)
inserted by
No. 45/2018
s. 202(1).

(1C) In giving consent to the use of a site under subsection (1A), the site owner may impose reasonable conditions relating to the non-residential use of the site.

S. 206ZI(1D)
inserted by
No. 45/2018
s. 202(1).

(1D) If the site tenant has requested consent under subsection (1A), the site tenant may apply to the Tribunal on the grounds that—

- (a) the site owner has withheld consent unreasonably, if the site owner has withheld consent; or
- (b) the site owner has imposed unreasonable conditions relating to the non-residential use of the site, if the site owner has imposed conditions of use on consent given under subsection (1).

S. 206ZI(1E)
inserted by
No. 45/2018
s. 202(1).

(1E) In determining an application under subsection (1D), the Tribunal, if it thinks fit, may order—

- (a) that consent by the site owner for the non-residential use of the site is not required; and
- (b) that conditions specified in the order apply to the non-residential use of the site.

(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.

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

**Note to
s. 206ZJ
inserted by
No. 45/2018
s. 202(2).**

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. 206ZJ
inserted by
No. 67/2010
s. 10.**

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

**Note to
s. 206ZJ
inserted by
No. 45/2018
s. 203(1).**

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.

**S. 206ZK
inserted by
No. 67/2010
s. 10.**

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

**Note to
s. 206ZK
inserted by
No. 45/2018
s. 203(2).**

206ZL Quiet enjoyment—site tenant's duty

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—

**S. 206ZL
inserted by
No. 67/2010
s. 10.**

- (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.

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

**Note to
s. 206ZL
inserted by
No. 45/2018
s. 203(3).**

S. 206ZM
inserted by
No. 67/2010
s. 10,
substituted by
No. 45/2018
s. 204.

206ZM Site tenant must keep and leave Part 4A site reasonably clean

- (1) A site tenant must keep the Part 4A site in a reasonably clean condition except to the extent that the site owner is responsible under this Act for keeping the Part 4A site in that condition.
- (2) A site tenant must maintain the Part 4A site and 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.
- (3) At the end of a site agreement, the site tenant must leave the Part 4A site, as far as practicable—
 - (a) reasonably clean and tidy; and
 - (b) in the same condition as when the site tenant entered into possession of the Part 4A site, taking into account fair wear and tear to the Part 4A site during occupation.

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

S. 206ZMA
inserted by
No. 45/2018
s. 204.

206ZMA Site tenant must keep Part 4A dwelling in good repair

A site tenant must keep the Part 4A dwelling that the site tenant occupies in a condition, taking into account fair wear and tear, that is—

- (a) in good repair; and
- (b) safe to occupy; and
- (c) does not pose a significant health risk.

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

**206ZMB Site tenant must not make Part 4A site
modifications without consent**

**S. 206ZMB
inserted by
No. 45/2018
s. 204.**

- (1) A site tenant must not, without the site owner's prior written consent—
 - (a) install any fixtures on the Part 4A site or in the Part 4A park; or
 - (b) erect any structure other than a Part 4A dwelling on the Part 4A site or in the Part 4A park; or
 - (c) make any alteration, renovation or addition to the Part 4A site or in the Part 4A park.
- (2) A site owner must not unreasonably refuse consent to modifications made by a site tenant that are—
 - (a) reasonable alterations within the meaning of section 55 of the **Equal Opportunity Act 2010**; and
 - (b) assessed and determined to be required modifications by an accredited occupational therapist or a prescribed practitioner.

Note

Section 210AA provides that a person may apply to the Tribunal for an order for compensation if the person has suffered a loss as a result of discrimination by the site owner or that person's agent in contravention of this section.

* * * * *

**S. 206ZN
inserted by
No. 67/2010
s. 10,
repealed by
No. 45/2018
s. 205.**

S. 206ZO
inserted by
No. 67/2010
s. 10.

206ZO Site tenant must notify site owner of and compensate for damage

- (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.

S. 206ZO(2)
amended by
No. 45/2018
s. 206(1).

- (2) A site tenant must report to the site owner any damage to a Part 4A site or damage to or breakdown of communal facilities of which the site tenant has knowledge.

Note to
s. 206ZO
inserted by
No. 45/2018
s. 206(2).

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

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.

Note to
s. 206ZP
inserted by
No. 45/2018
s. 207(1).

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

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.

Note to
s. 206ZQ
inserted by
No. 45/2018
s. 207(2).

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

Division 6—General duties of site owners

206ZR Site owner must give tenant certain information

S. 206ZR
inserted by
No. 67/2010
s. 10.

- (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.

S. 206ZR(1)
amended by
No. 45/2018
s. 208(1).

Penalty: 60 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.

S. 206ZR(2)
amended by
No. 45/2018
s. 208(1).

Penalty: 60 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.

Note to
s. 206ZR
inserted by
No. 45/2018
s. 208(2).

Note

This section is a duty provision and a contravention of this section
may be dealt with as a breach of a duty under Part 5 and other
provisions of this Act.

S. 206ZS
inserted by
No. 67/2010
s. 10.

206ZS Part 4A site plans

S. 206ZS(1)
amended by
No. 45/2018
s. 209(1).

- (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: 25 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).

Note to
s. 206ZS
inserted by
No. 45/2018
s. 209(2).

Note

This section is a duty provision and a contravention of this section
may be dealt with as a breach of a duty under Part 5 and other
provisions of this Act.

S. 206ZT
inserted by
No. 67/2010
s. 10.

206ZT Site owner must provide access

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.

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

Note to
s. 206ZT
inserted by
No. 45/2018
s. 210(1).

206ZU Quiet enjoyment—site owner's duty

S. 206ZU
inserted by
No. 67/2010
s. 10.

- (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.

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

Note to
s. 206ZU
inserted by
No. 45/2018
s. 210(2).

206ZV Site owner must keep Part 4A park clean

S. 206ZV
inserted by
No. 67/2010
s. 10.

- (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.

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

Note to
s. 206ZV
inserted by
No. 45/2018
s. 210(3).

S. 206ZVA
inserted by
No. 45/2018
s. 211.

206ZVA Site owner must maintain and repair rented site

A site owner must maintain in good repair any site occupied by a site tenant, including any structures or fixtures owned by the site owner.

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

S. 206ZVB
inserted by
No. 45/2018
s. 211.

206ZVB Site owner's liability for excessive usage caused by faults

- (1) Subject to subsection (2), if a site tenant has been charged for excessive usage of a service at the Part 4A site occupied by the site tenant, caused by a fault in infrastructure or any fixtures or buildings at or connected to the Part 4A site or the Part 4A park, the site owner is liable for that part of the excessive charge that is additional to an amount of ordinary usage by the site tenant.

Example

Excessive usage charges caused by a leak in the underground pipe of a water service connected to a site in a Part 4A park or a Part 4A park.

- (2) A site owner is not liable for excessive usage charges under subsection (1) unless—
- (a) the site tenant has notified the site owner, as soon as practicable, of—
 - (i) the excessive usage charges; and
 - (ii) the fault that caused the excessive usage; and
 - (b) the fault was not caused by any action or omission of the site tenant.

- (3) A site owner must reimburse a site tenant for any reasonable costs incurred by the site tenant for diagnosis of a fault referred to in subsection (1) by a suitably qualified person.
- (4) A site owner is not responsible for any excess usage charges or other costs for a fault caused by any property that is the responsibility of a service provider.

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

206ZVC Application to Tribunal about excessive usage charges

**S. 206ZVC
inserted by
No. 45/2018
s. 211.**

- (1) A site owner or a site tenant may apply to the Tribunal to determine the liability of the site owner and the site tenant for excessive usage charges referred to in section 206ZVB.
- (2) In making a determination under subsection (1), the Tribunal must have regard to the following—
 - (a) whether the site tenant had knowledge of the fault;
 - (b) whether the site tenant took reasonable steps to notify the site owner or that person's agent of the fault;
 - (c) whether the site tenant has been compensated by another person for any part of the excessive usage charges;
 - (d) whether the site owner has complied with this Act in respect of any urgent repairs;
 - (e) any diagnosis made by a water authority or other suitably qualified person in respect of the fault;

- (f) any maintenance and repairs conducted by the site owner;
- (g) any other matter the Tribunal considers appropriate.

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

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.
- (3) A site owner must ensure any damage or breakdown reported to the site owner by a site tenant under section 206ZO(2) is repaired as soon as practicable.

S. 206ZW(3)
inserted by
No. 45/2018
s. 212.

Note to
s. 206ZW
inserted by
No. 45/2018
s. 212.

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

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—

S. 206ZX(1)
amended by
No. 45/2018
s. 213(1).

- (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: 25 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—

S. 206ZX(2)
amended by
No. 45/2018
s. 213(1).

- (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: 25 penalty units.

S. 206ZX(3)
amended by
No. 45/2018
s. 213(1).

- (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: 25 penalty units.

- (4) In this section *required day* means a day 7 days after a person becomes a site tenant.

Note to
s. 206ZX
inserted by
No. 45/2018
s. 213(2).

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

Division 7—Part 4A park rules

S. 206ZY
inserted by
No. 67/2010
s. 10.

206ZY Site owner may make Part 4A park rules

S. 206ZY(1)
amended by
No. 45/2018
s. 214(1).

- (1) Subject to subsection (4), 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.
- (4) A site owner must not make a Part 4A park rule that requires a site tenant to undertake an upgrade or improvement work in relation to a Part 4A dwelling unless the upgrade or work is required to keep the dwelling in a reasonable state of cleanliness, safety and good repair.
- (5) Rules made in contravention of this section are invalid.

S. 206ZY(4)
inserted by
No. 45/2018
s. 214(2).

S. 206ZY(5)
inserted by
No. 45/2018
s. 214(2).

206ZZ Amendment of Part 4A park rules

S. 206ZZ
inserted by
No. 67/2010
s. 10.

- (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: 60 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: 60 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—

S. 206ZZ(1)
amended by
No. 45/2018
s. 215.

S. 206ZZ(2)
amended by
No. 45/2018
s. 215.

- (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.

S. 206ZZA
inserted by
No. 67/2010
s. 10.

206ZZA What if the Part 4A park rules are thought to be unreasonable?

- (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 7A—Repairs

Pt 4A Div. 7A
(Headings
and ss
206ZZAA–
206ZZAG)
inserted by
No. 45/2018
s. 216 (as
amended by
No. 47/2019
s. 79).

206ZZAA Urgent site repairs to Part 4A sites

S 206ZZAA
inserted by
No. 45/2018
s. 216 (as
amended by
No. 47/2019
s. 79).

- (1) A site tenant may cause urgent site repairs to a Part 4A site to be carried out if—
 - (a) the site tenant has taken reasonable steps to arrange for the site owner or that person's agent to immediately carry out the urgent site repairs to the Part 4A site; and
 - (b) the site owner or that person's agent did not carry out those repairs.
- (2) If the site tenant carries out urgent site repairs under subsection (1)—
 - (a) the site tenant must give the site owner 7 days written notice of—
 - (i) the repairs carried out; and
 - (ii) the cost of those repairs; and
 - (b) the site owner is liable to reimburse the site tenant for the reasonable cost of the urgent site repairs, or a prescribed greater amount (which includes any amount in respect of any GST payable on the supply to which the urgent site repairs relate), whichever is less.

- (3) If urgent site repairs are required to an item that uses or supplies water, electricity or gas and that item does not have a rating that is of or above a prescribed level of rating in a prescribed efficiency rating system, and that item cannot be repaired, the site tenant may replace it with an item that has a rating that is of or above a prescribed level of rating in the efficiency rating system.
- (4) This section does not apply—
 - (a) to equipment or appliances supplied by the site tenant; or
 - (b) if there is no immediate danger to health and safety and the site tenant is able to use facilities in the communal areas of the Part 4A park.

S 206ZZAB
inserted by
No. 45/2018
s. 216 (as
amended by
No. 47/2019
s. 79).

206ZZAB Application to Tribunal for urgent site repairs

- (1) A site tenant may apply to the Tribunal for an order requiring the site owner, or that person's agent, to carry out urgent site repairs if—
 - (a) the site tenant cannot pay the cost of the repairs; or
 - (b) the repairs cost more than a prescribed amount (which includes any amount in respect of any GST payable on the supply to which the urgent repairs relate); or
 - (c) the site owner or that person's agent 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.

- (3) Without limiting the matters to which the Tribunal may consider, the Tribunal must consider the Director's guidelines in determining an application under this section.

206ZZAC Application to Director to investigate need for non-urgent site repairs

S 206ZZAC
inserted by
No. 45/2018
s. 216 (as
amended by
No. 47/2019
s. 79).

- (1) A site tenant may apply to the Director to investigate whether the site owner is in breach of a duty to ensure the site which the site tenant occupies, or a structure or a fixture on the Part 4A site owned by the site owner, is maintained in good repair if—
- (a) the site tenant has given notice to the site owner that site repairs (other than urgent site repairs) are required to—
 - (i) the site which the site tenant occupies; or
 - (ii) a structure or a fixture on the Part 4A site owned by the site owner; and
 - (b) the site owner has not carried out the site repairs within 14 days after receiving the notice.
- (2) An application under subsection (1) must be in writing.
- (3) On an application under subsection (1), the Director—
- (a) may investigate; and
 - (b) may negotiate arrangements for the carrying out of site repairs if the Director is satisfied that the site owner is in breach of the duty to maintain the site, or a structure or a fixture in the Part 4A park owned by the site owner, in good repair; and
 - (c) may give a written report to the site tenant.

S 206ZZAD
inserted by
No. 45/2018
s. 216 (as
amended by
No. 47/2019
s. 79).

206ZZAD Application to Tribunal for non-urgent site repairs

- (1) A site tenant may apply to the Tribunal for an order requiring the site owner to carry out specified site repairs if—
 - (a) the site tenant has given written notice to the site owner that non-urgent repairs are required to the site; and
 - (b) the site owner has not caused the repairs to be carried out within 14 days after being given notice referred to in paragraph (a).
- (2) An application under subsection (1) must be heard by the Tribunal within 7 days after the application is made.

S 206ZZAE
inserted by
No. 45/2018
s. 216 (as
amended by
No. 47/2019
s. 79).

206ZZAE What can the Tribunal order?

- (1) The Tribunal may make an order requiring the site owner to carry out specified site repairs if it is satisfied that the owner is in breach of the duty to maintain the site, or a structure or a fixture in the Part 4A park owned by the site owner, in good repair.
- (2) An order made under subsection (1) must specify the repairs and the time within which they must be carried out.
- (3) The Tribunal may make an order requiring repairs to be carried out by a suitably qualified person.
- (4) The Tribunal may make an order requiring the payment of compensation.
- (5) Without limiting the matters to which the Tribunal may have regard in determining an application under section 206ZZAB or 206ZZAD, the Tribunal must have regard to the following—
 - (a) whether the repairs are needed because of—
 - (i) an act or omission of the site tenant; or

- (ii) non-compliance by the site tenant with a provision of a site agreement or a site tenant's duties under section 206ZO;
- (b) whether the site owner or that person's agent—
 - (i) was notified of the repairs; and
 - (ii) was given a reasonable opportunity to carry out the repairs;
- (c) whether the site tenant arranged for a suitably qualified person to carry out the repairs;
- (d) whether the site owner was required to engage a suitably qualified person to verify the quality of the repairs;
- (e) whether the site tenant has provided documentary evidence of the repair, including any receipts or copies of receipts for repair costs.

206ZZAF Payment of rent into Rent Special Account

- (1) If a site tenant has given notice under section 206ZZAC(1)(a) requiring repairs to be carried out, the site tenant may apply to the Tribunal for an order authorising the payment of rent into the Rent Special Account.
- (2) The Tribunal must make an order authorising the site 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 site owner in accordance with this Act; and
 - (b) the site owner has failed to comply with the duty to carry out the repairs; and

S 206ZZAF
inserted by
No. 45/2018
s. 216 (as
amended by
No. 47/2019
s. 79).

- (c) the site owner has not demonstrated that the site owner—
 - (i) is experiencing financial hardship; or
 - (ii) would experience financial hardship if the rent was paid into the Rent Special Account.
- (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 site owner; and
 - (b) on an application by the site owner, the Tribunal may order that the whole, or such part of the rent as it may determine, be paid to the site owner before the end of that period, if it is satisfied that the site owner has fulfilled or is fulfilling the site owner's duty to carry out the repairs.
- (4) A site tenant may apply to the Tribunal to order that the whole or any part of the rent paid into the Rent Special Account be paid to the site tenant if—
 - (a) the Tribunal has made an order under subsection (2) that rent be paid into the Rent Special Account; and
 - (b) the site owner has not effected any required repairs at the Part 4A site by the end of the period stated in that order.
- (5) In determining whether a site owner has demonstrated that the site owner has experienced or would experience financial hardship for the purposes of subsection (2), the Tribunal may have regard to any of the following—
 - (a) an eviction notice given to the site owner;

- (b) a disconnection notice in respect of a service or utility account held by the site owner;
- (c) a notice of legal proceedings issued against the site owner;
- (d) a letter from a non-profit organisation about the site owner's loss of employment or financial hardship;
- (e) a notice from a lender to the site owner, including—
 - (i) an overdraft call; or
 - (ii) a repossession notice in respect of a mortgaged property;
- (f) outstanding medical bills of the site owner;
- (g) a letter from a doctor in respect of the impact of the site owner's illness or carer's responsibility on the ability of the site owner to earn an income;
- (h) a final notice from a school to the site owner in respect of the payment of mandatory schooling fees;
- (i) funeral expenses payable by the site owner;
- (j) a repossession notice served on the site owner in respect of an essential item;
- (k) a hardship variation, or a written request to vary the terms of an existing loan held by the site owner;
- (l) any other prescribed document.

206ZZAG Repair provisions not applicable to certain damage

Sections 206ZZAC, 206ZZAD and 206ZZAE do not apply to damage caused by the misuse or the negligence of the site tenant or a site tenant's visitor.

S 206ZZAG
inserted by
No. 45/2018
s. 216 (as
amended by
No. 47/2019
s. 79).

Division 8—Site tenants' committees

- S 206ZZBAA**
inserted by
No. 45/2018
s. 217.
- 206ZZBAA Only one committee if park occupied by residents under Parts 4 and 4A**
- If a Part 4A park is occupied by residents under Part 4 and site tenants under Part 4A—
- (a) only one committee may be formed for the park; and
 - (b) the committee's members may include residents and site tenants.
- 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: 60 penalty units.
 - (2) A site owner must allow the site tenants to use suitable communal park facilities for meetings of a site tenants' committee.
 - (3) A site owner must consult with the site tenants committee about—
 - (a) a proposed change to the Part 4A park rules; and
 - (b) a proposal to remove or substantially restrict a facility or service available within the park; and
 - (c) a proposal to provide a new facility or service within the park.
- S. 206ZZC(1)**
amended by
No. 45/2018
s. 218(1).
- S. 206ZZC(3)**
inserted by
No. 45/2018
s. 218(2).

- (4) A site owner is taken to have consulted with a site tenants committee about a matter referred to in subsection (3) if the site owner—
- S. 206ZZC(4)
inserted by
No. 45/2018
s. 218(2).
- (a) has provided details of the proposal in writing to the committee; and
- (b) has allowed at least 14 days for the committee to respond in writing; and
- (c) has considered and responded in writing to any written response received from the committee.
- (5) The duty of a site owner under subsection (3) is in addition to any other duty of the site owner to consult with site tenants under this Act.
- S. 206ZZC(5)
inserted by
No. 45/2018
s. 218(2).

Division 9—Assignment and sub-letting

206ZZD Assignment by a site tenant

- (1) A site tenant must not assign a site agreement without the site owner's written consent.
- S. 206ZZD
inserted by
No. 67/2010
s. 10.
- (1A) In addition to subsection (1), if a Part 4A dwelling with a serious defect that is owned by a site tenant is being sold at the site occupied by the site tenant, the site owner may give consent to the assignment of the site agreement to the purchaser, subject to an undertaking that works to rectify the defect will be made to the dwelling within a reasonable time.
- S. 206ZZD(1A)
inserted by
No. 45/2018
s. 219(1).
- (1B) An undertaking referred to in subsection (1A) may be made by the vendor or the purchaser of the site dwelling.
- S. 206ZZD(1B)
inserted by
No. 45/2018
s. 219(1).
- (1C) If an undertaking referred to in subsection (1A) has been given to the site owner but the works to rectify the defect are not completed within a reasonable time, the site owner may apply to the Tribunal under section 452(3A) to seek an order
- S. 206ZZD(1C)
inserted by
No. 45/2018
s. 219(1).

compelling the person who made the undertaking to complete the works within a reasonable time.

S. 206ZZD(1D)
inserted by
No. 45/2018
s. 219(1).

- (1D) A site owner may reasonably refuse consent under subsection (1A) if—
- (a) the Part 4A dwelling being sold has a serious defect; and
 - (b) no undertaking has been given to the site owner to rectify the defect.

- (2) A site owner must not unreasonably withhold consent to the assignment of a site agreement.

S. 206ZZD(2A)
inserted by
No. 45/2018
s. 219(2).

- (2A) For the purposes of subsection (2), it is unreasonable to withhold consent on the basis of an attribute set out in section 6 of the **Equal Opportunity Act 2010**.

Note

Section 210AA provides that a person may apply to the Tribunal for an order for compensation if the person has suffered a loss as a result of discrimination by the site owner or that person's agent in contravention of this section.

- (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.

S. 206ZZE(2A)
inserted by
No. 45/2018
s. 220.

- (2A) For the purposes of subsection (2), it is unreasonable to withhold consent on the basis of an attribute set out in section 6 of the **Equal Opportunity Act 2010**.

Note

Section 210AA provides that a person may apply to the Tribunal for an order for compensation if the person has suffered a loss as a result of discrimination by the site owner or that person's agent in contravention of this section.

- (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.

S. 206ZZG(1)
amended by
No. 45/2018
s. 221(1).

Penalty: 60 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.

S. 206ZZG(2)
amended by
No. 45/2018
s. 221(1).

Penalty: 60 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.

S. 206ZZG(4)
substituted by
No. 45/2018
s. 221(2).

- (4) This section does not prevent a site owner from requiring a site tenant to bear any reasonable expenses that are reasonably incurred by the site owner because of the 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.

S. 206ZZH(2)
amended by
No. 45/2018
s. 222(1).

- (2) A site owner must not require a site tenant to enter into an agreement under subsection (1).

Penalty: 100 penalty units.

S. 206ZZH(3)
amended by
No. 45/2018
s. 222(2).

- (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: 60 penalty units.

S. 206ZZH(4)
amended by
No. 45/2018
s. 222(3).

- (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: 150 penalty units in the case of a natural person;

750 penalty units in the case of a body corporate.

(5) For the purpose of subsection (4), a site owner does not hinder or obstruct the sale of a Part 4A dwelling owned by a site tenant if—

S. 206ZZH(5)
inserted by
No. 45/2018
s. 222(4).

- (a) the site owner refuses consent to the assignment of a site agreement under section 206ZZD(1D); and
- (b) the Part 4A dwelling has a serious defect; and
- (c) no undertaking has been given to the site owner to rectify the serious defect.

(6) A site owner may charge a commission for the sale of a Part 4A dwelling if—

S. 206ZZH(6)
inserted by
No. 45/2018
s. 222(4).

- (a) the services provided by the site owner as a selling agent caused the sale; and
- (b) the purchaser of the site dwelling is not the site owner or a related party of the site owner.

(7) In subsection (6)—

S. 206ZZH(7)
inserted by
No. 45/2018
s. 222(4).

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).

Division 10—Rights of entry

S. 206ZZI
inserted by
No. 67/2010
s. 10.

206ZZI Entry of Part 4A site and Part 4A dwelling by site owner

- (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 207V; 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

S. 206ZZI(1)(c)
amended by
No. 45/2018
s. 240A(Sch. 1
item 4) (as
amended by
No. 47/2019
ss 83, 90).

- (c) if the Tribunal has made an abandonment order under section 207V.

S. 206ZZI(2)(c)
amended by
No. 45/2018
s. 240A(Sch. 1
item 5) (as
amended by
No. 47/2019
ss 83, 90).

206ZZJ Grounds for entry of Part 4A site

S. 206ZZJ
inserted by
No. 67/2010
s. 10.

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.

206ZZK Manner of entry

S. 206ZZK
inserted by
No. 67/2010
s. 10.

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.

S. 206ZZL
inserted by
No. 67/2010
s. 10.

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. 206ZZM
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).

Note to
s. 206ZZM
inserted by
No. 45/2018
s. 223.

Note

This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.

S. 206ZZN
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, when the site owner or that person's agent exercises a right of entry under this Division, any person causes damage to or loss of the site tenant's goods on the Part 4A site, including the Part 4A dwelling.

S. 206ZZN(1)
substituted by
No. 45/2018
s. 224.

- (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.

206ZZO What if a person exercising right of entry fails to comply with Division?

S. 206ZZO
inserted by
No. 67/2010
s. 10.

- (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.

206ZZP Offence relating to entering a site occupied by a site tenant

S. 206ZZP
inserted by
No. 67/2010
s. 10,
amended by
No. 45/2018
s. 225.

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: 25 penalty units.

Pt 4A Div. 11
(Headings
and ss 207–
207ZO)
inserted by
No. 45/2018
s. 239 (as
amended by
No. 1/2021
s. 97).

Division 11—Termination of site agreements in Part 4A parks

Subdivision 1—When can a site agreement be terminated?

New s. 207
inserted by
No. 45/2018
s. 239 (as
amended by
No. 1/2021
s. 97).

207 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. 207A
inserted by
No. 45/2018
s. 239 (as
amended by
No. 1/2021
s. 97).

207A Termination by agreement

A site agreement may be terminated by agreement of the site owner and site tenant.

S. 207B
inserted by
No. 45/2018
s. 239 (as
amended by
No. 1/2021
s. 97).

207B 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.

S. 207C
inserted by
No. 45/2018
s. 239 (as
amended by
No. 1/2021
s. 97).

207C Termination after notice to vacate

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.

207D Termination by abandonment

A site agreement terminates if the site tenant abandons the Part 4A site.

S. 207D
inserted by
No. 45/2018
s. 239 (as
amended by
No. 1/2021
s. 97).

207E Termination if Part 4A site is sub-let

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.

S. 207E
inserted by
No. 45/2018
s. 239 (as
amended by
No. 1/2021
s. 97).

207F Termination if site owner not owner of site

A site agreement terminates if the land owner gives a notice to vacate in accordance with section 207ZF 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. 207F
inserted by
No. 45/2018
s. 239 (as
amended by
No. 1/2021
s. 97).

207G 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. 207G
inserted by
No. 45/2018
s. 239 (as
amended by
No. 1/2021
s. 97).

S. 207H
inserted by
No. 45/2018
s. 239 (as
amended by
No. 1/2021
s. 97).

207H 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. 207I
inserted by
No. 45/2018
s. 239 (as
amended by
No. 1/2021
s. 97).

207I 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. 207J
inserted by
No. 45/2018
s. 239 (as
amended by
No. 1/2021
s. 97).

207J 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: 150 penalty units in the case of a natural person;

750 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: 150 penalty units in the case of a natural person;
750 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: 150 penalty units in the case of a natural person;
750 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: 150 penalty units in the case of a natural person;
750 penalty units in the case of a body corporate.

Subdivision 2—Variations of site agreement

S. 207K
inserted by
No. 45/2018
s. 239 (as
amended by
No. 1/2021
s. 97).

207K 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.

S. 207L
inserted by
No. 45/2018
s. 239 (as
amended by
No. 1/2021
s. 97).

207L Reduction of fixed term agreement

- (1) On the application of a party to a site agreement that is for a fixed term, 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.
- (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 agreement.

Subdivision 3—Termination and new site agreements because of family violence or personal violence

207M Application for termination or new site agreement because of family violence or personal violence

- (1) A person specified in subsection (2) may apply to the Tribunal for—
 - (a) an order terminating the existing site agreement for the Part 4A site; or
 - (b) an order—
 - (i) terminating the existing site agreement for the Part 4A site; and
 - (ii) requiring the site owner to enter into a new site agreement with the person and other persons (if any) specified in the application.

S. 207M
inserted by
No. 45/2018
s. 239 (as
amended by
No. 1/2021
s. 97).

- (2) For the purposes of subsection (1), the following persons are specified—
- (a) a party to the existing site agreement who—
 - (i) has been or is being subjected to family violence by another party to the existing site agreement; or
 - (ii) is a protected person under a personal safety intervention order made against another party to the existing site agreement;
 - (b) a person—
 - (i) who is the owner or co-owner of the Part 4A dwelling at law or in equity or who is residing in the Part 4A dwelling as the person's principal place of residence; and
 - (ii) who is not a party to the existing site agreement; and
 - (iii) who—
 - (A) has been or is being subjected to family violence by a person who is a party to the existing site agreement; or
 - (B) is a protected person under a personal safety intervention order made against a person who is a party to the existing site agreement.
- (3) For the purposes of subsection (2), a reference to a person who has been or is being subjected to family violence includes a protected person under a family violence safety notice, family violence intervention order or recognised non-local DVO.

- (4) An application under subsection (1) may be made without the consent of the site owner or any other party to the site agreement.
- (5) If a person specified in subsection (2) is a child, an application under subsection (1) may be made on that child's behalf by a parent or guardian of the child who lives in the Part 4A dwelling with the child.
- (6) For the purposes of a proceeding in relation to an application for an order under subsection (1), each of the following persons is a party to the proceeding—
 - (a) the person who made the application or on whose behalf the application was made;
 - (b) the site owner;
 - (c) any site tenant who is excluded from the Part 4A dwelling under a family violence safety notice, family violence intervention order, recognised non-local DVO or personal safety intervention order that protects a person specified in subsection (2);
 - (d) any other existing joint site tenants of the Part 4A site.
- (7) 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.

S. 207N
inserted by
No. 45/2018
s. 239 (as
amended by
No. 1/2021
s. 97).

207N Tribunal orders

- (1) On an application under section 207M(1)(a), if satisfied as to the matters set out in subsection (1B), the Tribunal may make an order terminating the existing site agreement for the Part 4A site.
- (1A) On an application under section 207M(1)(b), if satisfied as to the matters set out in subsection (2), the Tribunal may make an order—
 - (a) terminating the existing site agreement for the Part 4A site; and
 - (b) requiring the site owner to enter into a new site agreement for the Part 4A site with the person and other persons (if any) referred to in the application.
- (1B) For the purposes of subsection (1), the matters are—
 - (a) the specified person or that person's dependent children would be likely to suffer severe hardship if the site agreement for the Part 4A site were not terminated; and
 - (b) the hardship suffered by the specified persons would be greater than any hardship the site owner would suffer if the order were made; and
 - (c) if a site tenant is excluded from the Part 4A dwelling under a family violence safety notice, family violence intervention order, recognised non-local DVO or personal safety intervention order, it is reasonable to do so given the length of the exclusion under the notice or order and the length of the existing site agreement for the Part 4A site; and

- (d) it is reasonable to do so given the interests of any other site tenants (other than any excluded site tenant) under the existing site agreement for the Part 4A site and, in particular, whether the other site tenants support the specified person's application.
- (2) For the purposes of subsection (1A), the matters are—
- (a) the specified person and other persons (if any) could reasonably be expected to comply with the duties of a site tenant under a site agreement; and
 - (b) the specified person or that person's dependent children would be likely to suffer severe hardship if the specified person were compelled to leave the Part 4A dwelling; and
 - (c) the hardship suffered by the specified person would be greater than any hardship the site owner would suffer if the order were made; and
 - (d) if a site tenant is excluded from the Part 4A dwelling under a family violence safety notice, family violence intervention order, recognised non-local DVO or personal safety intervention order, it is reasonable to do so given the length of the exclusion under the notice or 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 any excluded site tenants) under the existing site agreement and, in particular, whether the other site tenants support the specified person's application.

- (3) In determining an application under section 207M(1), the Tribunal must take into account the following matters in relation to family violence or personal violence—
- (a) whether an application for a family violence safety notice, family violence intervention order, non-local DVO or personal safety intervention order has been made by or in respect of the specified person;
 - (b) if an application for a family violence safety notice, family violence intervention order, non-local DVO or personal safety intervention order has been made by or in respect of the specified person—
 - (i) whether there is a family violence safety notice, family violence intervention order, recognised non-local DVO or personal safety intervention order in effect; and
 - (ii) if there is a notice or an order in effect, whether a site tenant is excluded from the Part 4A dwelling under the notice or order;
 - (c) the ownership of the Part 4A dwelling;
 - (d) any prescribed matters;
 - (e) any other matter the Tribunal considers relevant.
- (4) If the Tribunal makes an order under subsection (1A), 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 for a fixed term, 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.
- (5) If the Tribunal makes an order under subsection (1), the Tribunal must specify the date on which the site agreement terminates.
- (6) If the Tribunal makes an order under subsection (1A), the existing site agreement is terminated on the signing of the new agreement.
- (7) If the Tribunal makes an order under subsection (1) or (1A), it may also make the following orders—
 - (a) an order that the site owner or that person's agent must ensure that the specified person has access to the Part 4A dwelling to remove the person's goods;
 - (b) an order that the site owner or that person's agent must not list information about the specified person on a residential tenancy database within the meaning of Part 10A.
- (8) In this section—

specified person means a person specified in section 207M(2).

207O Tribunal may determine parties' liability under terminated agreement

- (1) If the Tribunal makes an order under section 207N(1) or (1A), the Tribunal may determine the liability of the following persons in relation to any of the matters specified in subsection (2)—
 - (a) a site tenant who is excluded from a Part 4A dwelling under—
 - (i) a family violence safety notice; or
 - (ii) a family violence intervention order; or

S. 207O
inserted by
No. 45/2018
s. 239 (as
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No. 1/2021
s. 97).

- (iii) a recognised non-local DVO; or
 - (iv) a personal safety intervention order;
 - (b) a person specified in section 207M(2);
 - (c) any other site tenant under the existing site agreement.
- (2) For the purposes of subsection (1), the specified liabilities are any existing liabilities under the existing agreement, including—
- (a) liabilities relating to unpaid rent; and
 - (b) liabilities relating to damage caused to the site; and
 - (c) liabilities relating to outstanding utility charges.
- (3) To remove doubt, the termination of an agreement under section 207N 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.

S. 207P
inserted by
No. 45/2018
s. 239 (as
amended by
No. 1/2021
s. 97).

207P Cross-examination in a proceeding for termination or new agreement

- (1) Unless the Tribunal gives leave, in a proceeding on an application under section 207M(1)—
- (a) a person subjected to family violence must not be personally cross-examined by the person who subjected that person to the family violence; and
 - (b) a protected person under a personal safety intervention order must not be personally cross-examined by the person against whom the personal safety intervention order was made.

- (2) For the purposes of subsection (1), a reference to a person subjected to family violence includes a protected person under a family violence safety notice, family violence intervention order or recognised non-local DVO.
- (3) The Tribunal may give leave under subsection (1) with or without conditions.
- (4) If leave is given under subsection (1), the site tenant may only cross-examine the person specified in subsection (2)—
 - (a) as to those matters set out in section 207N(2), in the case of an application under section 207M(1)(b); and
 - (b) as to those matters set out in section 207N(1B), in the case of an application under section 207M(1)(a); and
 - (c) in accordance with any conditions to which the leave granted is subject.

Subdivision 4—Notice of intention to vacate or abandonment by site tenant

207Q Notice of intention to vacate

- (1) A site tenant may give a site owner a notice of intention to vacate a Part 4A site.
- (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. 207Q
inserted by
No. 45/2018
s. 239 (as
amended by
No. 1/2021
s. 97).

207R Notice to have no effect in certain circumstances

A notice of intention to vacate given under section 207Q 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. 207R
inserted by
No. 45/2018
s. 239 (as
amended by
No. 1/2021
s. 97).

S. 207S
inserted by
No. 45/2018
s. 239 (as
amended by
No. 1/2021
s. 97).

207S 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 207ZG; 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 been offered and accepted accommodation from the Director of Housing or a registered housing agency; 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.

207T Failure of site owner to comply with Tribunal order

S. 207T
inserted by
No. 45/2018
s. 239 (as
amended by
No. 1/2021
s. 97).

- (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.

207U Successive breaches by site owner

S. 207U
inserted by
No. 45/2018
s. 239 (as
amended by
No. 1/2021
s. 97).

- (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 if—
 - (a) the site owner has breached a site owner's duty provision; and
 - (b) on 2 previous occasions the site owner has been in breach of the same site owner's duty provision; and
 - (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.

- (2) If the site tenant gives a breach of duty notice to the site owner in respect of the breach of a site owner's duty provision, 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.
- (3) 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. 207V
inserted by
No. 45/2018
s. 239 (as
amended by
No. 1/2021
s. 97).

207V 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 5—Notice by site owner or mortgagee

S. 207W
inserted by
No. 45/2018
s. 239 (as
amended by
No. 1/2021
s. 97).

207W Damage

- (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, whether by act or omission intentionally or recklessly causes serious damage to—
 - (a) the Part 4A site; or

- (b) the Part 4A park, including any common areas; or
 - (c) any facility in the Part 4A park, including any safety equipment.
- (2) The notice may specify a termination date that is the date on which the notice is given or a later date.

207X Danger

- (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 endangers the safety of—
- (a) any person in the Part 4A park; or
 - (b) the site owner or the owner's agent; or
 - (c) a contractor or employee of a person referred to in paragraph (b).
- (2) The notice may specify a termination date that is the date on which the notice is given or a later date.
- (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. 207X
inserted by
No. 45/2018
s. 239 (as
amended by
No. 1/2021
s. 97).

207Y Threats and intimidation

- (1) A site owner may give a site tenant a notice to vacate a site if the site tenant or any other person residing at the Part 4A site occupied by the site tenant has seriously threatened or intimidated—
- (a) the site owner or the owner's agent; or
 - (b) a contractor or employee of a person referred to in paragraph (a).

S. 207Y
inserted by
No. 45/2018
s. 239 (as
amended by
No. 1/2021
s. 97).

- (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. 207Z
inserted by
No. 45/2018
s. 239 (as
amended by
No. 1/2021
s. 97).

207Z 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. 207ZA
inserted by
No. 45/2018
s. 239 (as
amended by
No. 1/2021
s. 97).

207ZA 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. 207ZB
inserted by
No. 45/2018
s. 239 (as
amended by
No. 1/2021
s. 97).

207ZB Successive breaches by site tenant

- (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 if—
- (a) the site tenant has breached a duty provision;
and
 - (b) on 2 previous occasions the site tenant has been in breach of the same duty provision;
and
 - (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.

- (2) If the site owner gives a breach of duty notice to the site tenant in respect of the breach of a duty provision, 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.
- (3) The notice must specify a termination date that is not less than 14 days after the date on which the notice is given.

207ZC Use of Part 4A site for illegal purpose

S. 207ZC
inserted by
No. 45/2018
s. 239 (as
amended by
No. 1/2021
s. 97).

- (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.

207ZD Assignment or sub-letting without consent

S. 207ZD
inserted by
No. 45/2018
s. 239 (as
amended by
No. 1/2021
s. 97).

- (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.

207ZE Closure of Part 4A park

S. 207ZE
inserted by
No. 45/2018
s. 239 (as
amended by
No. 1/2021
s. 97).

- (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. 207ZF
inserted by
No. 45/2018
s. 239 (as
amended by
No. 1/2021
s. 97).

207ZF 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 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.

207ZG Notice under fixed term site agreement

S. 207ZG
inserted by
No. 45/2018
s. 239 (as
amended by
No. 1/2021
s. 97).

- (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.

207ZH Notice of no effect

S. 207ZH
inserted by
No. 45/2018
s. 239 (as
amended by
No. 1/2021
s. 97).

- (1) A notice to vacate under section 207Y or 207ZG is of no effect if it was given in response to—
- (a) the exercise, or proposed exercise, by the site tenant of a right under this Act or the site agreement; or
- (b) the site tenant making a report under section 206ZO(2).
- (2) A notice given under section 207ZG is of no effect if the giving of the notice would constitute direct discrimination within the meaning of the **Equal Opportunity Act 2010**.
- (3) A person is not entitled to apply to the Tribunal challenging the validity of a notice to vacate referred to in subsection (1) or (2) after the end of 60 days after the date on which the notice to vacate is given.

S. 207ZI
inserted by
No. 45/2018
s. 239 (as
amended by
No. 1/2021
s. 97).

207ZI 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.

Subdivision 6—Notices under this Division

207ZJ Form of notice of intention to vacate

A notice of intention to vacate a Part 4A site is not valid unless—

- (a) it is in writing; and
- (b) it is signed by the person giving the notice or by that person's agent.

S. 207ZJ
inserted by
No. 45/2018
s. 239 (as
amended by
No. 1/2021
s. 97).

207ZK Form of notice to vacate

A notice to vacate a Part 4A site given under this Division is not valid unless—

- (a) it is in the relevant prescribed form; and
- (b) it is addressed to the Part 4A site tenant; and
- (c) it is signed by the person giving the notice or by that person's agent; and
- (d) it specifies the reason or reasons for giving the notice; and
- (e) it specifies the termination date which is the date by which compliance is required.

S. 207ZK
inserted by
No. 45/2018
s. 239 (as
amended by
No. 1/2021
s. 97).

207ZL 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 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.

S. 207ZL
inserted by
No. 45/2018
s. 239 (as
amended by
No. 1/2021
s. 97).

S. 207ZM
inserted by
No. 45/2018
s. 239 (as
amended by
No. 1/2021
s. 97).

207ZM How can a notice be withdrawn?

- (1) A notice of intention to vacate or a notice to vacate given under this Division is withdrawn only if a notice of withdrawal is given.
- (2) 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.

Subdivision 7—Can a notice to vacate be challenged?

S. 207ZN
inserted by
No. 45/2018
s. 239 (as
amended by
No. 1/2021
s. 97).

207ZN Site tenant may challenge notice to vacate on grounds of family violence or personal violence

- (1) On or before the hearing of an application for a possession order, a site tenant who has received a notice to vacate under section 207W, 207X, 207Y, 207Z, 207ZA, 207ZB or 207ZC may apply to the Tribunal challenging the validity of the notice to vacate on the grounds that the relevant act or breach for which the notice to vacate was given was caused by the act of a person who has subjected the site tenant to family violence or personal violence.
- (2) An application under subsection (1) must be made within 30 days after the notice to vacate is given.

S. 207ZO
inserted by
No. 45/2018
s. 239 (as
amended by
No. 1/2021
s. 97).

207ZO What can the Tribunal order?

On an application under section 207ZN, the Tribunal must make an order that the notice to vacate is invalid if satisfied that—

- (a) the applicant has been, or is being, subjected to family violence or personal violence; and

- (b) the relevant act or breach on which the notice to vacate was given was caused by the act of a person who has subjected the applicant to family violence or personal violence.

Part 5—Compensation and compliance

* * * * *

S. 207
amended by
Nos 45/2002
s. 87, 67/2010
s. 11,
repealed by
No. 45/2018
s. 226.

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, 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; and
 - (ii) to compensate the person to whom the duty is owed, if the breach has resulted in loss or damage to that person; and
 - (d) state that the person in breach must not commit a similar breach again; and

S. 208(2)(b)
amended by
No. 45/2018
s. 227(1) (as
amended by
No. 47/2019
s. 80).

S. 208(2)(c)(i)
amended by
No. 45/2018
s. 227(2)(a) (as
amended by
No. 47/2019
s. 80).

S. 208(2)(c)(ii)
amended by
No. 45/2018
s. 227(2)(b) (as
amended by
No. 47/2019
s. 80).

- (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 91ZF or 207U (as the case requires) applies, a notice of intention to vacate may be given; or
 - (iii) if section 91ZP, 142ZH, 206AX or 207ZB (as the case requires) applies, a notice to vacate may be given; and
- (f) be in writing; and
- Note**
- Section 506(1)(da) provides that a document to be served on or given to a person under this Act may be served or given by electronic communication in accordance with the **Electronic Transactions (Victoria) Act 2000**.
- (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 Nos 67/2010 s. 12(a), 45/2018 s. 240A(Sch. 1 item 6) (as amended by No. 47/2019 ss 83,90).

S. 208(2)(e)(iii) amended by Nos 67/2010 s. 12(b), 45/2018 s. 240A(Sch. 1 item 7) (as amended by No. 47/2019 ss 83, 90).

Note to s. 208(2)(f) inserted by No. 45/2018 s. 227(3).

S. 208(2)(h) amended by No. 45/2002 s. 88(b).

209 Application for compensation or compliance order for breach of duty

S. 209 amended by No. 67/2010 s. 78 (ILA s. 39B(1)).

- (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.

S. 209(2)
inserted by
No. 67/2010
s. 78,
amended by
No. 23/2016
s. 25(1).

- (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. 209AA
inserted by
No. 40/2018
s. 13.

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. 209AAB
inserted by
No. 45/2018
s. 228.

209AAB Application for compensation or compliance order for cost of urgent repairs

- (1) A renter may apply to the Tribunal for a compensation order or a compliance order under section 212 if—
- (a) the renter has arranged for urgent repairs to be conducted at rented premises in accordance with section 72(1); and
- (b) the renter has given written notice to the residential rental provider of—
- (i) the urgent repairs; and
- (ii) the cost of the urgent repairs; and
- (c) the residential rental provider has not reimbursed the renter for the cost of the urgent repairs within 7 days after receiving written notice referred to in paragraph (b).

- (2) A resident of a rooming house may apply to the Tribunal for a compensation order or a compliance order under section 212 if—
 - (a) the resident has arranged for urgent repairs to be conducted at a room or a rooming house in accordance with section 129(1); and
 - (b) the resident has given written notice to the rooming house operator of—
 - (i) the urgent repairs; and
 - (ii) the cost of the urgent repairs; and
 - (c) the rooming house operator has not reimbursed the resident for the cost of the urgent repairs within 7 days after receiving written notice referred to in paragraph (b).
- (3) A resident of a caravan park may apply to the Tribunal for a compensation order or a compliance order under section 212 if—
 - (a) the resident has arranged for urgent repairs to be conducted to a caravan in accordance with section 188(1) or at a site in accordance with section 188A; and
 - (b) the resident has given written notice to the caravan owner, or the caravan park owner, as the case requires, of—
 - (i) the urgent repairs; and
 - (ii) the cost of the urgent repairs; and
 - (c) the caravan owner or the caravan park owner, as the case requires, has not reimbursed the resident for the cost of the urgent repairs within 7 days after receiving written notice referred to in paragraph (b).

- (4) A site tenant may apply to the Tribunal for a compensation order or a compliance order under section 212 if—
- (a) the site tenant has arranged for urgent repairs to be conducted at a Part 4A site in accordance with section 206ZZAA(1); and
 - (b) the site tenant has given written notice to the site owner of—
 - (i) the urgent repairs; and
 - (ii) the cost of the urgent repairs; and
 - (c) the site owner has not reimbursed the site tenant for the cost of the urgent repairs within 7 days after receiving written notice referred to in paragraph (b).

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
- (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(ab)
inserted by
No. 56/2012
s. 6.

S. 209A(c)
amended by
No. 67/2010
s. 13(a).

S. 209A(d)
inserted by
No. 67/2010
s. 13(b).

210AA Application to Tribunal for compensation order for discrimination

S. 210AA
inserted by
No. 45/2018
s. 229.

- (1) Subject to subsection (2), the following persons may apply to the Tribunal for an order for payment of compensation—
- (a) a renter, on the basis that the renter suffered loss or damage because the residential rental provider or that person's agent has contravened section 30A, 64(1B)(c) or 81;
 - (b) a resident, on the basis that the resident suffered loss or damage because—
 - (i) the rooming house operator, or that person's agent, failed to comply with section 94F or 115(2); or
 - (ii) the caravan park owner, the caravan owner, or that person's agent, has contravened section 145B or 171B;
 - (c) a site tenant, on the basis that the site tenant suffered loss or damage because the site owner, or that person's agent—
 - (i) has contravened section 206JC or 206ZMB; or
 - (ii) has unreasonably withheld consent under section 206ZZD(2) or 206ZZE(2) on the basis of an attribute set out in section 6 of the **Equal Opportunity Act 2010**.
- (2) A renter, a resident or a site tenant must not apply to the Tribunal under subsection (1) if the renter, resident or site tenant has already brought a dispute under Part 8 of the **Equal Opportunity Act 2010** in respect of a claim or facts which could form the basis of the application under subsection (1).

210 Application to Tribunal for compensation order on other grounds

S. 210(1)
amended by
No. 45/2018
s. 230(1).

- (1) A party to a residential rental agreement may apply to the Tribunal for an order for payment to the applicant by the other party to the residential rental agreement of compensation for loss or damage suffered by the applicant because—

S. 210(1)(a)
amended by
No. 45/2018
s. 230(1).

- (a) the other party failed to comply with the residential rental agreement or that party's duties under this Act relating to the residential rental agreement; or

S. 210(1)(b)
amended by
No. 45/2018
s. 230(1).

- (b) the applicant has paid to the other party more than the applicant is required to pay in accordance with this Act or the residential rental agreement.

S. 210(2)
substituted by
No. 45/2018
s. 230(2).

- (2) This section does not apply—
- (a) to a duty under a duty provision or section 66; or
- (b) if a residential rental provider has given a renter a notice to vacate under section 91ZM.

S. 210A
inserted by
No. 63/2005
s. 23,
amended by
No. 45/2018
s. 360(1).

210A Application to Tribunal by resident for compensation

If a rooming house operator 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.

211 Matters which may be considered by Tribunal

The Tribunal, in hearing an application under section 209, 209AAB, 210AA, 210, 210A or 210B, may take into account—

S. 211
amended by
Nos 63/2005
s. 24, 67/2010
s. 15(a),
45/2018
s. 231(a).

- (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 residential rental agreement or site agreement in respect of which the claim is made; and
- (b) in the case of a breach of a residential rental 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
- (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;

S. 211(a)
amended by
Nos 67/2010
s. 15(b),
45/2018
s. 360(2)(a).

S. 211(b)
amended by
No. 45/2018
s. 360(2)(a).

S. 211(ba)
inserted by
No. 67/2010
s. 15(c).

S. 211(bb)
inserted by
No. 56/2012
s. 7,
amended by
No. 45/2018
s. 360(2)(b).

- (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 operator 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; and
- (h) whether a renter who was required to give written notice under section 72AA gave that notice; and
- (i) if applicable, the matters referred to in section 211A.

S. 211(g)
amended by
No. 45/2018
s. 231(b).

S. 211(h)
inserted by
No. 45/2018
s. 231(c).

S. 211(i)
inserted by
No. 45/2018
s. 231(c).

211A Further matters to be considered by Tribunal

S. 211A
inserted by
No. 45/2018
s. 232 (as
amended by
No. 47/2019
s. 81).

- (1) Subsection (2) applies in respect of an application for compensation for damage to—
- (a) rented premises under a residential rental agreement; and
 - (b) a rooming house, including a room or common areas of the rooming house; and
 - (c) a caravan park, caravan or movable dwelling; and
 - (d) a Part 4A park or a Part 4A site.
- (2) In calculating an amount of compensation payable by a renter, a resident or a site tenant (as the case requires) on an application referred to in subsection (1), the Tribunal must take into account any depreciation of the damaged part of the property referred to in subsection (1)(a), (b), (c) or (d) by having regard to—
- (a) the Uniform Capital Allowance System; or
 - (b) any other prescribed scale.
- (3) In calculating an amount of compensation payable on an application under section 210 or 210B for early termination of a residential rental agreement by the renter, or of a site agreement by the site tenant, the Tribunal must—
- (a) determine advertising costs and reletting fees (if any) incurred by the residential rental provider or the site owner (as the case requires) on a basis that is proportionate to the actual cost of securing the renter or the site tenant; and

Example

A renter has lived in rented premises under a residential rental agreement, on terms including a 12 month fixed term, rent of \$500 per week and a reletting fee of \$500. The renter notifies the property

manager that the renter will terminate the rental agreement 6 months before the end of the fixed term. The property manager advertises the rented premises for rent immediately and finds a new renter. The advertising costs were \$250. The new renter enters the premises one week after the previous renter vacates the premises. The residential rental provider's costs of advertising and reletting fees are \$1000, which is the sum of one week's rent (\$500), the reletting fee pro-rated for 6 months of the unexpired term of the agreement (\$250) and advertising costs (\$250).

- (b) determine the amount of compensation for loss of rent (if any) by taking into account what loss could reasonably have been mitigated by the residential rental provider or the site owner (as the case requires) by promptly reletting the rented premises or the Part 4A site; and
- (c) have regard to any severe hardship the renter or the site tenant would have been expected to suffer due to an unforeseen change in circumstances, if the residential rental agreement or site agreement had continued; and
- (d) not award any compensation for loss of future rent to the residential rental provider, or the site owner (as the case requires), if the residential rental provider or the site owner served a notice to vacate on the renter or the site tenant, unless the notice was served because the renter or the site tenant terminated or repudiated the residential rental agreement or the site agreement; and

- (e) determine compensation payable after a renter or a site tenant has given the residential rental provider or the site owner a notice of intention to vacate under section 91ZB, 91ZC or 207S.

Note

Section 91ZH applies to advanced payments of rent by a renter to a residential rental provider after the rented premises have been abandoned by the renter.

- (4) If the Tribunal is determining an application under section 210 in respect of a claim by a residential rental provider for unpaid rent in a residential rental agreement for a fixed term of more than 5 years that has been terminated early, the Tribunal may not award an amount of compensation in excess of a maximum of one month's rent under the agreement for each 12 month period of the unexpired term of the agreement.
- (5) In the case of an application referred to in subsection (1)(a), the Tribunal must take into account whether a renter who was required to give written notice under section 72AA has given that notice to the residential rental provider.

211B Director's guidelines to be considered by Tribunal

The Tribunal must consider the Director's guidelines when hearing an application under section 209, 209AAB, 210, 210AA, 210A or 210B.

S. 211B
inserted by
No. 45/2018
s. 232 (as
amended by
No. 47/2019
s. 81).

212 Orders of Tribunal

- (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(1A)
inserted by
No. 40/2018
s. 14,
amended by
No. 45/2018
s. 233(1).

- (1A) In the case of an application under section 209AA, if the Tribunal is satisfied that the prohibited term of the residential rental 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.

S. 212(1B)
inserted by
No. 45/2018
s. 233(2).

- (1B) In the case of an application under section 209AAB, if the Tribunal is satisfied that the residential rental provider has not reimbursed the renter for the cost of the urgent repairs within 7 days after receiving written notice, the Tribunal may order the residential rental provider to pay the renter for the urgent repairs as specified in the order.

S. 212(2)
amended by
No. 67/2010
s. 16(a).

- (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),
amended by
No. 45/2018
s. 233(3).

- (2A) In the case of an application under section 210A, if the Tribunal is satisfied that a rooming house operator has failed to comply with section 94B, 529 or 531—

- | | |
|---|---|
| (a) the Tribunal may make an order requiring the rooming house operator to comply with that provision; and | S. 212(2A)(a) amended by No. 45/2018 s. 233(3). |
| (b) if the Tribunal is satisfied that compensation should be paid it may make an order directing the rooming house operator to pay compensation as specified in the order. | S. 212(2A)(b) amended by No. 45/2018 s. 233(3). |
| (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 renter, resident or site tenant, the order must specify that if the order is not complied with, the renter, 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), 45/2018 s. 233(4). |
| (5) If an order for compensation is made in favour of a renter, 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 renter, resident or site tenant. | S. 212(5) amended by Nos 63/2005 s. 25(2), 67/2010 s. 16(d), 45/2018 s. 233(4). |
| (6) The Tribunal may order the Director not to list the making of an order under this section for compensation or compliance against a residential rental provider on the Rental Non-compliance Register if it is satisfied that, in all the circumstances, it would be unfair to list the making of the order on the Register. | S. 212(6) inserted by No. 45/2018 s. 309. |

213 Compensation for unpaid rent

- | | |
|---|---|
| (1) A residential rental provider is not entitled to claim compensation under this Act for a failure of a renter to pay rent under a residential rental agreement unless any amount of unpaid rent is not paid for at least 14 days after it has accrued due. | S. 213(1) amended by No. 45/2018 s. 234(1). |
|---|---|

Residential Tenancies Act 1997
No. 109 of 1997
Part 5—Compensation and compliance

S. 213(2)
substituted by
No. 45/2018
s. 234(2).

- (2) Subsection (1) does not apply if the renter, on at least 2 previous occasions, has failed to pay any amount of rent under the residential rental agreement within 14 days after it has accrued due.

S. 213(3)
inserted by
No. 45/2018
s. 234(2).

- (3) A residential rental provider is not entitled to claim compensation under this Act for loss of rent that has not yet accrued due if the residential rental provider has issued the renter a notice to vacate under section 91ZM.

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
Nos 67/2010
s. 18(1),
45/2018
s. 360(3).

- (1) If an application for a possession order is made under Part 7 as a result of a failure by a renter, 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 renter, resident or site tenant for the unpaid rent or hiring charge owed.

(2) On an application under subsection (1), the Tribunal may—

- | | |
|--|---|
| (a) make a determination of the amount of rent owing to the residential rental provider, rooming house operator, 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)(a) amended by Nos 67/2010 s. 18(2), 45/2018 s. 360(4)(5)(a). |
| (b) make a determination directing the Authority, on termination of the residential rental agreement or site agreement or when the residency right ends, to pay out an amount of bond to or on account of the residential rental provider, rooming house operator, caravan park owner, site owner or caravan owner (as the case requires) in respect of the rent or hiring charge owing. | S. 213A(2)(b) amended by Nos 67/2010 s. 18(3), 45/2018 s. 360(4)(5)(b). |

213B Application to Tribunal for loss or damage

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)).

- | | |
|---|--|
| (1) If a possession order is made under Part 7 as a result of a failure by a renter to pay rent, an application by the residential rental provider to the Tribunal under this Part (other than under section 213A) for payment by the renter of compensation for loss or damage suffered by the residential rental provider as a result of the failure of the renter to pay rent must be made within 28 days after the renter delivers up vacant possession of the rented premises. | S. 213B(1) amended by No. 45/2018 s. 360(6). |
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S. 213B(2)
inserted by
No. 67/2010
s. 19(2).

- (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.

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).

* * * *

S. 214A
inserted by
No. 67/2010
s. 20.

214A Compensation for loss of rent under terminated site agreement

S. 214A(1)
amended by
No. 45/2018
s. 240A(Sch. 1
item 8) (as
amended by
No. 47/2019
ss 83, 90).

- (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 suffered by the site owner as a result of the termination of a site agreement under section 207D or 207H, 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.

215 What powers does a court have to award compensation?

S. 215
amended by
Nos 67/2010
s. 21, 45/2018
s. 360(7).

If a party to a residential rental 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 residential rental 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.

S. 215A
inserted by
No. 45/2018
s. 235.

215A Compensation in relation to closure of caravan park or Part 4A park

- (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.

**215B Tribunal may make park closure compensation
order**

**S. 215B
inserted by
No. 45/2018
s. 235.**

- (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.

Residential Tenancies Act 1997
No. 109 of 1997

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Pt 6
(Headings
and ss 216–
321)
amended by
Nos 52/1998
s. 236(k),
27/2001
s. 3(Sch. 1
item 10.3),
45/2002
ss 20-26,
40-43, 54-57,
59-64, 80, 89,
63/2005 ss 26,
27, 44/2008
s. 114(1),
52/2008
ss 262, 263,
53/2010
s. 221(Sch.
items 9.5-9.7),
67/2010
ss 22-24, 79,
133-140,
18/2011 s. 3,
47/2012
ss 3-8,
57/2013
ss 13-15,
2/2016 s. 18,
26/2016
ss 87-93,
53/2016
ss 118-122,
40/2018
ss 15-18,
45/2018
ss 323-327,
19/2019
ss 147, 148,
47/2019 s. 48,
11/2020
ss 47-49,
1/2021 ss 84,
85,
repealed by
No. 45/2018
s. 240.

Part 7—Regaining possession—Possession orders and warrants

Division 1—Applications for possession orders

S. 322
substituted by
No. 45/2018
s. 241.

322 Application for possession order by residential rental provider

- (1) A residential rental provider may apply to the Tribunal for a possession order for rented premises if the residential rental provider has given the renter a notice to vacate the rented premises.
- (2) A residential rental provider may apply to the Tribunal for a possession order for rented premises if—
 - (a) the renter has given the residential rental provider a notice of intention to vacate the premises; and
 - (b) the renter has not delivered up vacant possession of the premises.

S. 323
(Heading)
inserted by
No. 45/2018
s. 361(1).

323 Application for possession order by rooming house operator

A rooming house operator may apply to the Tribunal for a possession order for a room if—

S. 323
amended by
No. 45/2018
s. 361(2).

S. 323(a)
amended by
No. 45/2018
s. 361(2).

- (a) the rooming house operator has given the resident a notice to vacate the room; or

S. 323(b)
amended by
No. 45/2018
s. 361(2).

- (b) the resident has given the rooming house operator a notice of intention to vacate the room.

323A Application for possession order by person entitled to give notice to vacate under section 142ZO

A person entitled to give notice to vacate under section 142ZO may apply to the Tribunal for a possession order for the building if—

S. 323A
(Heading)
amended by
No. 45/2018
s. 240A(Sch. 1
item 9) (as
amended by
No. 47/2019
ss 83, 90).

S. 323A
inserted by
No. 67/2010
s. 80,
amended by
No. 45/2018
s. 240A(Sch. 1
item 10) (as
amended by
No. 47/2019
ss 83, 90).

- (a) the person has given a resident a notice to vacate under section 142ZO; and

S. 323A(a)
amended by
No. 45/2018
s. 240A(Sch. 1
item 10) (as
amended by
No. 47/2019
ss 83, 90).

- (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—

S. 325(1)(a)
amended by
No. 45/2018
s. 242(1).

- (a) the mortgagee has given the renter a notice to vacate the premises; and

S. 325(1)(b)
amended by
No. 45/2018
s. 242(1).

- (b) the renter 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—
- S. 325(4)
inserted by
No. 67/2010
s. 26.
- (a) the mortgagee has given a site tenant a notice to vacate the Part 4A site in accordance with section 207ZI; and
- S. 325(4)(a)
amended by
No. 45/2018
s. 240A(Sch. 1
item 11) (as
amended by
No. 47/2019
ss 83, 90).
- (b) the site tenant fails to vacate the Part 4A site by the date specified in the notice to vacate.
- (5) 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. 325(5)
inserted by
No. 45/2018
s. 242(2).

326 Time for application

- (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(1)
amended by
No. 67/2010
s. 27(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(2)
amended by
No. 67/2010
s. 81(a).
- (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.
- S. 326(3)
amended by
No. 67/2010
s. 27(b).

Residential Tenancies Act 1997
No. 109 of 1997
Part 7—Regaining possession—Possession orders and warrants

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,
repealed by
No. 45/2018
s. 243.

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S. 328
repealed by
No. 52/1998
s. 236(l).

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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

S. 330(1)
amended by
Nos 67/2010
ss 29(1)(a),
81(b)(i),
45/2018
s. 244(1)(a).

- (1) The Tribunal must make a possession order requiring a renter, 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 residential rental provider, rooming house operator, caravan park owner, caravan owner, site owner, person entitled to give a notice to vacate under section 142ZO or mortgagee was entitled to give the notice; and S. 330(1)(a)(i) amended by Nos 67/2010 ss 29(1)(b), 81(b)(ii), 45/2018 ss 244(1)(b), 240A(Sch. 1 item 12) (as amended by No. 47/2019 ss 83, 90).
 - (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 renter, resident or site tenant, that the residential rental provider, rooming house operator, caravan park owner, caravan owner or site owner acted reasonably by relying on the notice of intention to vacate; and S. 330(1)(b) amended by Nos 67/2010 s. 29(1)(a)(c), 45/2018 s. 244(1)(b)(c).
- (c) that the residential rental provider, rooming house operator, caravan park owner, caravan owner, site owner, person entitled to give a notice to vacate under section 142ZO or mortgagee has complied with section 72 of the **Victorian Civil and Administrative Tribunal Act 1998**; and S. 330(1)(c) amended by Nos 101/1998 s. 32, 67/2010 ss 29(1)(b), 81(b)(iii), 45/2018 ss 244(1)(b), 240A(Sch. 1 item 12) (as amended by No. 47/2019 ss 83, 90).
- (d) that the renter, 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)(d) amended by Nos 67/2010 ss 29(1)(a), 81(b)(iv), 57/2013 s. 16(a), 45/2018 s. 244(1)(d).

S. 330(1)(e)
inserted by
No. 57/2013
s. 16(b),
amended by
No. 45/2018
ss 244(2),
240A(Sch. 1
item 12) (as
amended by
No. 47/2019
ss 83, 90).

- (e) that any resident who is entitled to a period of notice under section 142ZO has been given the required notice; and

S. 330(1)(f)
inserted by
No. 45/2018
s. 244(3).

- (f) that in the circumstances of the particular application, it is reasonable and proportionate having regard to section 330A, to make a possession order taking into account the interests of, and the impact on, each of the following in making the possession order—
- (i) the residential rental provider, rooming house operator, caravan park owner, site owner or mortgagee, as the case requires;
 - (ii) the renter, resident or site tenant;
 - (iii) any co-tenants or co-site tenants or other residents;
 - (iv) any neighbours or any other person who may be, or who has been affected by, the acts or behaviour of the renter, resident or site tenant to whom the notice to vacate was given.

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.

- (3) The Tribunal must have regard to any guidelines issued by the Director when determining any application for a possession order which is supported by a notice to vacate under section 91ZJ, 142ZC, 206AR or 207X.

S. 330(3)
inserted by
No. 45/2018
s. 244(4) (as
amended by
No. 1/2021
s. 98).

330A What is reasonable and proportionate?

S. 330A
inserted by
No. 45/2018
s. 245.

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) the nature, frequency and duration of the conduct of the renter, resident or site tenant which led to the notice to vacate being given, including whether the conduct is a recurring breach of obligations under a residential rental agreement, residency right or site agreement;
- (b) whether the breach is trivial;
- (c) whether the breach was caused by the conduct of any person other than the renter, resident or site tenant;
- (d) whether the renter, resident or site tenant has made an application for a family violence safety notice, family violence intervention order, non-local DVO or personal safety intervention order and—
 - (i) if an application has been made, whether a family violence safety notice, family violence intervention order, recognised non-local DVO or personal safety intervention order has been made and whether the notice or order is still in force; and
 - (ii) if a notice or order was made, whether it included an exclusion condition; and

- (iii) any other matter in relation to family violence or personal violence the Tribunal considers relevant;
- (e) whether the breach has been remedied as far as is practicable;
- (f) whether the renter, resident or site tenant has, or will soon have, capacity to remedy the breach and comply with any obligations under the residential rental agreement, residency right or site agreement, as the case requires;
- (g) the effect of the conduct of the renter, resident or site tenant on others as a renter, resident or site tenant;
- (h) whether any other order or course of action is reasonably available instead of making a possession order;
- (i) as the case requires, the behaviour of the residential rental provider, the provider's agent, the rooming house operator, the caravan park owner, the caravan owner or the site owner;
- (j) any other matter the Tribunal considers relevant.

331 Order to be dismissed or adjourned in certain circumstances

S. 331(1)
amended by
No. 45/2018
s. 246(1)(a).

- (1) Subject to subsection (4), 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 91ZM; or
S. 331(1)(a)(i) amended by No. 45/2018 s. 240A(Sch. 1 item 13) (as amended by No. 47/2019 ss 83, 90).
 - (ii) in the case of a rooming house, a notice to vacate given under section 142ZF; or
S. 331(1)(a)(ii) amended by No. 45/2018 s. 240A(Sch. 1 item 14) (as amended by No. 47/2019 ss 83, 90).
 - (iii) in the case of a caravan or site, a notice to vacate given under section 206AU or 206AV; or
S. 331(1)(a)(iii) amended by Nos 67/2010 s. 30(1)(a), 45/2018 s. 240A(Sch. 1 item 15) (as amended by No. 47/2019 ss 83, 90).
 - (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
S. 331(1)(a)(iv) inserted by No. 67/2010 s. 30(1)(b).
- (b) the Tribunal considers that satisfactory arrangements have been or can be made to avoid financial loss to the residential rental provider, rooming house operator, caravan park owner, caravan owner or site owner (as the case may be).
S. 331(1)(b) amended by Nos 67/2010 s. 30(1)(c), 45/2018 s. 246(1)(b).
- (1A) For the purposes of subsection (1)(b), the Tribunal may adjourn the application and—
S. 331(1A) inserted by No. 45/2018 s. 246(2).
- (a) refer the renter to a financial counselling service or other prescribed services; and

- (b) require the service to conduct an assessment of the person's ability to enter into and comply with a payment plan in relation to any outstanding arrears of rent.

S. 331(1B)
inserted by
No. 45/2018
s. 246(2).

- (1B) The Tribunal may require the financial counselling service or other prescribed service to provide a report to the Tribunal on the assessment of the ability of the renter to enter into and comply with a payment plan.

S. 331(1C)
inserted by
No. 45/2018
s. 246(2).

- (1C) A report under subsection (1B)—
 - (a) may be made orally or in writing; and
 - (b) must be made within the time required by the Tribunal.

S. 331(2)
amended by
No. 45/2018
s. 246(3).

- (2) An adjournment may be on any terms the Tribunal thinks fit, including an order that the renter undergoes an assessment and enters into and complies with a payment plan for the payment of any arrears of rent.

S. 331(3)
substituted by
No. 45/2002
s. 82.

- (3) On the resumption of an adjourned hearing, the Tribunal—

S. 331(3)(a)
amended by
Nos 67/2010
s. 30(2),
45/2018
s. 246(4).

- (a) may make a possession order if the renter or site tenant has continued to accrue arrears of rent during the adjournment period; and

S. 331(3)(b)
amended by
Nos 67/2010
s. 30(2),
45/2018
s. 246(4).

- (b) must dismiss the application if the renter or site tenant—
 - (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.

- (4) The Tribunal must dismiss an application for a possession order which is supported with a notice to vacate given under section 91ZM if—

S. 331(4)
inserted by
No. 45/2018
s. 246(5).

- (a) the arrears of rent have been paid by the renter after the renter was given the notice to vacate but before the termination date specified in the notice; and
- (b) the notice to vacate is the first, second, third or fourth notice to vacate under section 91ZM given to the renter within a period of 12 months.

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 91ZO, 142ZG, 206AW or 207ZA; and

S. 332(1)(a)
amended by
Nos 67/2010
s. 31(a),
45/2018
s. 240A(Sch. 1
item 16) (as
amended by
No. 47/2019
ss 83, 90).

- (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. 332(1)(b)(ii)
repealed by
No. 45/2018
s. 247(1).

- (iii) the breach of duty is not a recurrence of a previous breach of duty.

S. 332(2)
amended by
No. 67/2010
s. 31(b),
repealed by
No. 45/2018
s. 247(2).

S. 332A
inserted by
No. 45/2018
s. 248.

* * * * *

332A Tribunal may dismiss possession order application and make compliance order in certain circumstances

- (1) Despite section 330, if an application for a possession order is supported by a notice to vacate given under section 91ZI, 91ZJ, 91ZK, 142ZB, 142ZC, 142ZD, 206AQ, 206AR, 206AS, 207W, 207X or 207Y, the Tribunal, having regard to whether it is reasonable and proportionate in accordance with section 330A to do so—
 - (a) may dismiss the application for a possession order; and
 - (b) if it is appropriate to do so, may make a compliance order under section 212 as if the application for a possession order had been an application under section 209.
- (2) Without limiting section 212, the compliance order may require a renter, resident or site tenant, as the case requires—
 - (a) to remedy the breach of duty to which the application for a possession order related; and
 - (b) to refrain from committing a further or similar breach.
- (3) If the Tribunal finds that the breach of duty to which the application for a possession order related was committed or caused by a person other than the renter, resident or site tenant, the Tribunal may order that the renter, resident or site tenant, as the case requires, does not permit the person who

committed or caused the breach to enter,
or remain in, the rented premises, room or site.

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
renter must vacate those rented
premises; and

S. 333(1)(a)(i)
amended by
No. 45/2018
s. 249(1)(a).

(ii) in the case of a room in a rooming
house, the resident must vacate the
room and rooming house; and

(iia) in the case of a building in respect of
which notice under section 142ZO was
given, the resident must vacate that
building; and

S. 333(1)
(a)(iia)
inserted by
No. 67/2010
s. 81(d),
amended by
Nos 47/2012
s. 30, 45/2018
s. 240A(Sch. 1
item 17) (as
amended by
No. 47/2019
ss 83, 90).

(iii) in the case of a site or caravan, the
resident must vacate the site or caravan;
and

(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).

S. 333(1)(b)
amended by
Nos 67/2010
ss 32(1)(b),
81(e)(i),
45/2018
s. 249(1)(b).

(b) a direction to the renter, 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)(c)
amended by
No. 45/2002
s. 96(a).

(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(1A)
inserted by
No. 57/2013
s. 17,
amended by
No. 45/2018
s. 240A(Sch. 1
item 18) (as
amended by
No. 47/2019
ss 83, 90).

(1A) Despite subsection (1)(a), if a resident referred to in subparagraph (ia) is entitled to a longer period of notice under section 142ZO, 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(1B)
inserted by
No. 45/2018
s. 249(2).

(1B) 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 given under section 91ZI, 91ZJ, 91ZK, 142ZB, 142ZC, 142ZD, 206AQ, 206AR, 206AS, 207W, 207X or 207Y, in determining the day on which the renter, resident or site tenant must vacate the rented premises, room, caravan or site, the Tribunal may take into account any special requirements the renter, resident or site tenant may have to access relevant social support or alternative accommodation.

S. 333(2)
amended by
Nos 67/2010
s. 81(e)(ii)(iii),
37/2014
s. 10(Sch.
item 144.2),
45/2018
s. 249(3).

(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 renter 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.

(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)—

(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)(a)
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(3)(b)
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. 333(4)
inserted by
No. 67/2010
s. 32(2),
amended by
No. 37/2014
s. 10(Sch.
item 144.2).

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

S. 334(1)
amended by
No. 45/2018
s. 361(3).

- (1) If a possession order is made under this Division in respect of rented premises, the residential rental agreement terminates at the end of the day before the day on which possession of the rented premises is delivered up to the residential rental provider or mortgagee.

S. 334(2)
inserted by
No. 67/2010
s. 33(2).

- (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.

Pt 7 Div. 2
(Headings
and ss 335–
343)
amended by
Nos 52/1998
s. 236(m)–(o),
37/2014
s. 10(Sch.
item 144.2),
repealed by
No. 45/2018
s. 250.

* * * *

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 residential rental agreement at any time within the period of 12 months before the date of the application; and | S. 344(1)(a) amended by No. 45/2018 s. 361(4)(a). |
| (b) the applicant alleges that the premises are occupied solely by a person (not being a renter under a residential rental 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(1)(b) amended by No. 45/2018 s. 361(4). |

* * * *	S. 344(2) repealed by No. 52/1998 s. 236(p).
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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—

- | | |
|--|---|
| (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(a) amended by No. 52/1998 s. 236(q). |
| (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— | S. 346(b) amended by No. 52/1998 s. 236(r). |

- (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

S. 349(b)
amended by
No. 52/1998
s. 236(q).

- (c) if it is not satisfied that the applicant is entitled to the premises, may cancel the possession order.

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—

S. 351(1)
amended by
No. 52/1998
s. 236(q).

- (a) immediately, if the possession order so provides; or

- (b) within 6 months after the date of the possession order if the renter, resident or site tenant fails to comply with the possession order.

S. 351(1)(b)
amended by
Nos 67/2010
s. 34, 45/2018
s. 251(a).

* * * * *

S. 351(2)
amended by
No. 52/1998
s. 236(q),
repealed by
No. 45/2018
s. 251(b).

- (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
Nos 67/2010
s. 35(1)(a),
45/2018
s. 252(1)(a).

- (1) The Tribunal may provide in a possession order under this Part in relation to rented premises, a room in a rooming house, a caravan or site in a caravan park or a 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
Nos 67/2010
s. 35(1)(b),
45/2018
s. 252(1)(b).

- (a) the renter, resident 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
Nos 67/2010
s. 35(1)(c),
45/2018
s. 252(1)(c).

- (b) the hardship would be greater than any hardship that the residential rental provider, rooming house operator, caravan park owner, caravan owner, 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),
substituted by
No. 45/2018
s. 252(2).

- (a) an order made on the application of—
- (i) a residential rental provider who has given a notice to vacate the rented premises under section 91ZI, 91ZJ, 91ZK or 91ZL; or
 - (ii) a rooming house operator who has given a notice to vacate the room in the rooming house under section 142ZB, 142ZC, 142ZD or 142ZE; or

(iii) a caravan park owner or caravan owner who has given a notice to vacate under section 206AQ, 206AR, 206AS or 206AT; or

(iv) a site owner who has given a notice to vacate the Part 4A site under section 207W, 207X, 207Y or 207Z; or

(b) an order made under Division 2.

353 Immediate issue of warrant if failure to comply during postponement

S. 353
amended by
No. 67/2010
s. 36,
substituted by
No. 45/2018
s. 253.

On the application of the residential rental provider, rooming house operator, caravan park owner, caravan owner, site owner or mortgagee of rented premises, a rooming house, a caravan, a caravan park, a Part 4A site or Part 4A park (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 renter, resident or site tenant—

- (a) has failed to pay any rent accrued due; or
- (b) has otherwise failed to comply with the residential rental agreement, residency right, residency agreement or site agreement; or
- (c) has contravened a provision of this Act relating to the residential rental agreement, residency right or site agreement.

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—

S. 355(1)(a)
amended by
No. 45/2002
s. 90.

- (a) be in a form prescribed by rules made under the **Victorian Civil and Administrative Tribunal Act 1998**; and

- (b) be directed—

S. 355(1)(b)(i)
amended by
No. 37/2014
s. 10(Sch.
item 144.2).

- (i) to a police officer; or

- (ii) to an authorised person; and

- (c) give brief details of the possession order; and

S. 355(1)(d)
amended by
No. 52/1998
s. 236(q).

- (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

(b) with such assistance as is necessary—

S. 355(2)(b)
substituted by
No. 63/2005
s. 28.

(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

S. 355(2)(b)(i)
amended by
No. 67/2010
s. 81(f)(ii).

(ii) to compel any person named in the order to vacate a shared room.

(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.

S. 355(3)
amended by
No. 67/2010
s. 81(f)(iii).

(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 apply for the issue of a warrant of possession within 6 months after the date of the possession order.

S. 356(1)
substituted by
No. 45/2018
s. 254.

(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—

S. 357(a)
amended by
No. 52/1998
s. 236(q).

(a) return the warrant to the principal registrar;
and

(b) specify in writing whether the warrant has or has not been executed.

358 Offence to re-enter rooming house, site or caravan

S. 358(1)
amended by
Nos 67/2010
ss 81(g), 141,
45/2018
s. 240A(Sch. 1
item 19) (as
amended by
No. 47/2019
ss 83, 90).

(1) A person who is removed from a rooming house or in the case of a building in respect of which notice under section 142ZO 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

359 Removal of caravan from a caravan park

S. 359
amended by
No. 52/1998
s. 236(q).

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—

S. 365(3)
amended by
No. 44/2008
s. 114(2).

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.

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 operator, 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 Nos 67/2010 s. 38(c), 45/2018 s. 362(1)(a).

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),
amended by
No. 45/2018
s. 362(1)(b).

resident includes—

- (a) a renter 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.

S. 368(2A)
inserted by
No. 45/2018
s. 255(1) (as
amended by
No. 47/2019
s. 84).

- (2A) 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 a resident's visitor has occurred on the managed premises and the resident caused, counselled or permitted the resident's visitor to commit the serious act of violence; or

- (b) the safety of any person on the managed premises is in danger from a resident's visitor and the resident caused, counselled or permitted the resident's visitor to commit the act that endangered the safety of the person.
- (3) A notice to leave under this section must be in the prescribed form.
- (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. S. 368(4)
inserted by
No. 45/2002
s. 91(2).
- (5) A manager of managed premises must not give a resident a notice to leave under subsection (2A) if— S. 368(5)
inserted by
No. 45/2018
s. 255(2).
 - (a) the serious act of violence or the act that endangered the safety of a person is family violence; and
 - (b) the resident's visitor is a family member of the resident.

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
Nos 67/2010
s. 142, 45/2018
s. 256.

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: 150 penalty units.

S. 369
amended by
Nos 67/2010
s. 143, 45/2018
s. 257.

369 Offence to remain on premises if given notice to leave

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: 60 penalty units.

S. 370
(Heading)
inserted by
No. 67/2010
s. 39(1).

370 What happens if a notice to leave is given?

S. 370(1)
amended by
Nos 67/2010
s. 39(2)(3) (as
amended by
No. 36/2011
s. 38(1)),
45/2018
s. 362(2).

- (1) If a resident is given a notice to leave managed premises under section 368, the residential rental 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(2)
amended by
Nos 45/2002
s. 93, 67/2010
s. 39(3) (as
amended by
No. 36/2011
s. 38(1)),
45/2018
s. 362(2A) (as
amended by
No. 1/2021
s. 102).

- (2) Despite subsection (1), unless the Tribunal makes an order under section 376(1B), the resident is still required to pay—

S. 370(2)(a)
amended by
No. 45/2018
s. 362(3).

- (a) any rent under that residential rental agreement, residency right or site agreement in respect of the period that the residential rental 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.

372 Offence to re-enter premises during suspension

A resident whose residential rental 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: 60 penalty units.

S. 372
amended by
Nos 67/2010
ss 40, 144,
45/2018
ss 258, 259.

372A Suspended resident may make arrangements for collection of personal items

A resident whose residential rental agreement, residency right or site agreement has been suspended under this Part may make arrangements with the manager of managed premises for a person authorised by the resident to enter the managed premises to collect the resident's personal items.

S. 372A
inserted by
No. 45/2018
s. 260.

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.

S. 373
amended by
Nos 52/1998
s. 236(q),
67/2010 s. 145.

S. 374
(Heading)
inserted by
No. 67/2010
s. 41(1).

374 Urgent applications to Tribunal

S. 374(1)
amended by
Nos 67/2010
s. 41(2)(3),
45/2018
s. 362(4).

- (1) If a residential rental agreement, residency right or site agreement is suspended under this Part, the residential rental provider, rooming house operator, caravan park owner or site owner (as the case may be) may apply to the Tribunal for an order that the residential rental agreement, residency right or site agreement be terminated.

S. 374(2)
amended by
Nos 67/2010
s. 41(3),
45/2018
s. 362(5).

- (2) An application under subsection (1) must be made before the end of 2 business days after the suspension of the residential rental agreement, residency right or site agreement.

S. 375
amended by
No. 45/2018
s. 261 (ILA
s. 39B(1)).

375 Tribunal must hear application urgently

- (1) The Tribunal must hear an application under section 374 within 2 business days after the application is made.
- (2) The Tribunal must not adjourn an application under section 374 for a total period of more than 5 days.

S. 375(2)
inserted by
No. 45/2018
s. 261.

376 What can the Tribunal order?

S. 376(1)
amended by
No. 67/2010
s. 42,
substituted by
No. 45/2018
s. 262(1).

- (1) After hearing an application under section 374, the Tribunal must determine whether it was appropriate to give the resident the notice to leave the managed premises.

S. 376(1A)
inserted by
No. 45/2018
s. 262(1).

- (1A) If the Tribunal determines that it was appropriate to give the resident the notice to leave the managed premises, the Tribunal may make an order terminating the residential rental agreement, residency right or site agreement as at the date of that order, if satisfied as to the matters set out in section 330A.

(1B) If the Tribunal determines it was not appropriate to give the resident the notice to leave the managed premises, the Tribunal must order that—

S. 376(1B)
inserted by
No. 45/2018
s. 262(1).

- (a) the suspension of the residential rental agreement, residency right or site agreement cease; and
- (b) the resident be allowed to resume occupation of the rented premises, room, caravan, site or Part 4A site under the residential rental agreement, residency right or site agreement.

(2) The Tribunal may make any ancillary or incidental orders that the Tribunal considers appropriate.

(3) If the Tribunal orders under subsection (1B) that the suspension of the residential rental agreement, residency right or site agreement cease—

S. 376(3)
substituted by
No. 45/2002
s. 94,
amended by
Nos 67/2010
s. 42(2),
45/2018
s. 262(2).

- (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 residential rental provider of rented premises in a managed high density building must not allow a person who is not a party to a residential rental agreement suspended under section 370 to lease or

S. 377(1)
amended by
Nos 67/2010
s. 146, 45/2018
s. 263(1)(3).

occupy the rented premises during the period of suspension.

Penalty: 150 penalty units in the case of a natural person;

750 penalty units in the case of a body corporate.

S. 377(2)
amended by
Nos 67/2010
s. 146, 45/2018
s. 263(2)(3).

- (2) A rooming house operator 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.

Penalty: 150 penalty units in the case of a natural person;

750 penalty units in the case of a body corporate.

S. 377(3)
amended by
Nos 67/2010
s. 146, 45/2018
s. 263(3).

- (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.

Penalty: 150 penalty units in the case of a natural person;

750 penalty units in the case of a body corporate.

S. 377(3A)
inserted by
No. 67/2010
s. 43,
amended by
No. 45/2018
s. 263(3).

- (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: 150 penalty units in the case of a natural person;

750 penalty units in the case of a body corporate.

- (4) Despite subsection (2), a rooming house operator 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. 377(4)
inserted by
No. 63/2005
s. 29,
amended by
No. 45/2018
s. 263(4).

377A Notice to leave prohibited if notice to vacate under section 91ZJ, 142ZC, 206AR or 207X already given

A manager is not entitled to give a notice to leave under section 368 in respect of an act or omission if—

S. 377A
(Heading)
amended by
Nos 67/2010
s. 44(1),
45/2018
s. 240A(Sch. 1
item 20) (as
amended by
No. 47/2019
ss 83, 90).
S. 377A
inserted by
No. 45/2002
s. 95.

- (a) a residential rental provider has given a notice to vacate under section 91ZJ in respect of that act or omission; or

S. 377A(a)
amended by
No. 45/2018
ss 362(6)(a),
240A(Sch. 1
item 21) (as
amended by
No. 47/2019
ss 83, 90).

- (b) a rooming house operator has given a notice to vacate under section 142ZC in respect of that act or omission; or

S. 377A(b)
amended by
No. 45/2018
ss 362(6)(b),
240A(Sch. 1
item 22) (as
amended by
No. 47/2019
ss 83, 90).

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S. 377A(c)
amended by
Nos 67/2010
s. 44(2)(a),
45/2018
s. 240A(Sch. 1
item 23) (as
amended by
No. 47/2019
ss 83, 90).

(c) a caravan park owner has given a notice to vacate under section 206AR in respect of that act or omission; or

S. 377A(d)
inserted by
No. 67/2010
s. 44(2)(b),
amended by
No. 45/2018
s. 240A(Sch. 1
item 24) (as
amended by
No. 47/2019
ss 83, 90).

(d) a site owner has given a notice to vacate under section 207X in respect of that act or omission.

Part 9—Goods left behind by renters, residents and site tenants

Pt 9 (Heading)
amended by
Nos 67/2010
s. 45, 45/2018
s. 363(1).

Division 1—Preliminary

378 Application of this Part

This Part applies if—

- (a) in the case of rented premises, the residential rental 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(a)
amended by
No. 45/2018
s. 363(2).

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 residential rental agreement has been terminated—
 - (i) the former residential rental provider; or
 - (ii) if a mortgagee has taken possession of the rented premises, the mortgagee; and

S. 379 def. of
*owner of
premises*
amended by
No. 67/2010
s. 47(1),
substituted by
No. 45/2018
s. 264(b).

- (b) in relation to a rooming house—
 - (i) the rooming house operator; or
 - (ii) if the rooming house operator is not the owner of the rooming house and has ceased operating the rooming house, the rooming house owner; or
 - (iii) if a mortgagee has taken possession of the rooming house, the mortgagee; and
- (c) in relation to a caravan park owner or caravan owner, the caravan park owner, caravan park mortgagee or caravan mortgagee; and
- (d) in relation to a Part 4A site—
 - (i) the site owner; or
 - (ii) if a mortgagee has taken possession of the Part 4A park, the mortgagee;

S. 379 def. of
renter
inserted by
No. 45/2018
s. 264(a).

renter includes a resident or site tenant;

S. 379 def. of
stored goods
amended by
Nos 67/2010
s. 47(2)
45/2018
s. 264(c).

stored goods means—

- (a) in relation to rented premises in respect of which a residential rental 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 which are stored in accordance with section 386;

- (c) in relation to a caravan or caravan park, goods left behind in a caravan which are stored in accordance with section 386;
- (d) in relation to a Part 4A site, goods left behind on the Part 4A site which are stored in accordance with section 386.

Division 2—Personal documents left behind

380 What happens if personal documents are left behind?

If a renter leaves behind personal documents, the owner of premises—

- (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 renter as to when and from where the documents may be collected.

S. 380
(Heading)
inserted by
No. 67/2010
s. 48(1).

S. 380
amended by
Nos 67/2010
s. 48(2),
45/2018 s. 265.

S. 380(a)
amended by
No. 45/2002
s. 66(a).

S. 380(c)
amended by
Nos 45/2002
s. 66(b),
67/2010
s. 48(2),
45/2018 s. 265.

* * * * *

S. 380(d)
repealed by
No. 45/2002
s. 66(c).

S. 381
(Heading)
inserted by
No. 45/2002
s. 67(1).

381 Disposal of personal documents after 90 days

S. 381(1)
amended by
No. 45/2002
s. 67(2).

- (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.
- (2) Nothing in this section affects the operation of any other Act or law affecting the destruction or disposition of the documents.

Note to
s. 381(2)
inserted by
No. 45/2002
s. 67(3).

Note

It may be an offence under certain legislation of the State and Commonwealth to destroy certain documents.

- (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
Nos 67/2010
s. 49, 45/2018
s. 266(1).

- (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 renter and the removal and taking reasonable care of those documents.

- (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.

S. 382(2)
amended by
Nos 67/2010
s. 147, 45/2018
s. 266(2).

Penalty: 150 penalty units in the case of a
natural person;
750 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) Despite subsection (1)(a), the owner of premises must not remove and destroy or dispose of goods that have been left behind if those goods are prescribed goods.

S. 384(2)
substituted by
Nos 45/2002
s. 68, 45/2018
s. 267(1).

* * * * *

S. 384(3)
inserted by
No. 45/2002
s. 68,
repealed by
No. 45/2018
s. 267(2).

- (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**.

S. 385
repealed by
No. 47/2019
s. 57.

* * * * *

S. 386
substituted by
No. 45/2018
s. 268.

386 What must an owner of premises do about goods left behind?

- (1) If a former renter leaves behind goods (other than goods which may be removed and destroyed or disposed of under section 384), the owner of premises must—
 - (a) take reasonable steps to give a notice, in the form approved by the Director, to the former renter 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 owner of premises gave the notice to the former renter.
- (2) A notice under subsection (1)(a) must include a statement informing the former renter of the former renter's rights and obligations in relation to the goods left behind.
- (3) The owner of premises may remove the goods from the premises and store them at a safe place.

S. 387
substituted by
No. 45/2018
s. 268.

387 Renters and other entitled persons may reclaim goods left behind

- (1) A former renter or other person who has a lawful right to goods left behind may reclaim the goods at any time before the destruction or disposal of the goods.

- (2) If the owner of premises requires an occupation fee in relation to stored goods, the former renter or other person who has a lawful right to the stored goods must pay the occupation fee before reclaiming the stored goods.

388 Occupation fee for goods left behind

S. 388
substituted by
No. 45/2018
s. 268.

- (1) An owner of premises may require a former renter or other person who has a lawful right to stored goods to pay a fee in respect of the stored goods if the quantity of the goods is sufficient to prevent the owner of premises from renting the premises, room, caravan or site.
- (2) The occupation fee must not exceed—
- (a) an amount that is equal to the rent that would have been payable under the former residential rental agreement, agreement for the room, caravan or site or site agreement for each day the goods are stored; and
 - (b) in any event, in total, the amount of rent for 14 days.

Note

An owner of premises may apply to the Tribunal for an order that a higher amount be paid by the former renter.

- (3) Despite subsection (2), if the Tribunal orders an owner of premises to store goods for more than 14 days, the former renter or other person who has a lawful right to the goods is liable to pay a fee that is equal to—
- (a) for a former renter of rented premises, the rent that would have been payable under the former residential rental agreement for each day the goods are stored; or

- (b) for a former renter of a room, caravan or site, the rent that would have been payable for the room, caravan or site for each day the goods are stored; or
- (c) for a former renter of a Part 4A site, the rent that would have been payable under the former site agreement for each day the goods are stored; or
- (d) for another person who has a lawful right to the goods, the rent that would have been payable under the relevant former residential rental agreement, or for the relevant room, caravan or site (as the case requires) for each day the goods are stored.

S. 388A
inserted by
No. 67/2010
s. 50,
repealed by
No. 45/2018
s. 269.

* * * *

S. 389
amended by
No. 67/2010
ss 51, 148,
repealed by
No. 45/2018
s. 269.

* * * *

S. 390
amended by
Nos 67/2010
s. 52, 45/2018
s. 240A(Sch. 1
item 25) (as
amended by
No. 47/2019
ss 83, 90).

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 206AP, 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.

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 207V 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.

S. 390A
inserted by
No. 67/2010
s. 53,
amended by
No. 45/2018
s. 240A(Sch. 1
item 26) (as
amended by
No. 47/2019
ss 83, 90).

391 When owner of premises may sell or dispose of stored goods

- (1) An owner of premises may sell or dispose of stored goods if the former renter or other person who has a lawful right to the stored goods has not reclaimed them within 14 days, unless the owner of premises has agreed or been ordered by the Tribunal to store the goods for longer than 14 days.
- (2) An owner of premises 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 renter or other person who has a lawful right to the stored goods has not reclaimed the goods.

S. 391
substituted by
No. 45/2018
s. 270.

392 Renter may request proceeds of sale of goods

- (1) A former renter 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 occupation fee required by the owner of premises;
 - (b) the amount of the reasonable costs of the sale.

S. 392
substituted by
No. 45/2018
s. 270.

- (2) The former renter 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 renter 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 owner of premises 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.

S. 393
amended by
Nos 44/2008
s. 114(3),
45/2002
s. 69(1),
repealed by
No. 45/2018
s. 271.

* * * * *

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
Nos 67/2010
s. 54, 45/2018
s. 272.

- (a) a defect in title or want of title in the former renter; 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 an owner of premises refuses to store goods for more than 14 days?

If a former renter or other person who has a lawful right to goods left behind requests the owner of premises to store the goods for more than 14 days and the owner of premises refuses, the former renter or other person may apply to the Tribunal for an order requiring the owner to store the goods for a period of more than 14 days.

S. 395
amended by
Nos 45/2002
s. 69(2),
67/2010 s. 55,
substituted by
No. 45/2018
s. 273.

395A What if the occupation fee is not sufficient to cover the costs of storage?

If an owner of premises believes that the total amount of the occupation fee that may be charged under section 388 will not be sufficient to cover the actual costs of storing goods, the owner of premises may apply to the Tribunal for an order that the former renter or other person who has a lawful right to the goods pay a higher occupation fee to reclaim the goods.

S. 395A
inserted by
No. 45/2018
s. 273.

396 What if goods or documents are disposed of in contravention of this Part?

If an owner of premises destroys, disposes of or sells a former renter's goods or personal documents otherwise than in accordance with this Part, the former renter or other person who has a lawful right to the goods or documents may apply to the Tribunal for an order that the owner of premises pay compensation for the loss of the goods or documents.

S. 396
amended by
No. 67/2010
s. 56,
substituted by
No. 45/2018
s. 274.

S. 397
amended by
No. 67/2010
s. 57,
substituted by
No. 45/2018
s. 274.

397 What if goods or documents are wrongfully retained?

If an owner of premises wrongfully retains and refuses to give up goods or personal documents left behind, the former renter or other person who has a lawful right to the goods or documents may apply to the Tribunal for the following—

- (a) an order for the return of the goods or personal documents;
- (b) an order that the owner of premises pay compensation for the loss of those goods or documents.

S. 398
amended by
No. 67/2010
s. 58,
substituted by
No. 45/2018
s. 274.

398 What if goods or documents are damaged or lost?

If the owner of premises wilfully or recklessly damages or loses stored goods or personal documents, a former renter or other person who has a lawful right to those goods or documents may apply to the Tribunal for an order that that the owner of premises pay compensation for the loss or damage of those goods or documents.

S. 399
amended by
Nos 44/2008
s. 114(4),
67/2010 s. 59,
repealed by
No. 45/2018
s. 275.

* * * *

S. 399A
inserted by
No. 67/2010
s. 82,
amended by
No. 23/2016
s. 25(1),
repealed by
No. 45/2018
s. 275.

* * * *

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 residential rental agreement, residency right or site agreement.

S. 400(2)
amended by
Nos 67/2010
s. 60, 45/2018
s. 363(3).

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, order that an owner of premises must store goods for a period of more than 14 days; or
- (b) in the case of an application under section 395A, order that a former renter or other person who has a lawful right to the goods pay a fee greater than the fee that may be charged under section 388; or
- (c) in the case of an application under section 396, order that an owner of premises pay compensation for the loss of the goods or documents; or
- (ca) in the case of an application under section 397—
- (i) order that the owner of premises return the goods or personal documents; or

S. 401(a)
substituted by
No. 45/2018
s. 276.

S. 401(b)
substituted by
No. 45/2018
s. 276.

S. 401(c)
substituted by
No. 45/2018
s. 276.

S. 401(ca)
inserted by
No. 45/2018
s. 276.

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	(ii)	order that the owner of premises pay compensation for the loss of the goods or documents; or		
	(iii)	order that the owner of premises both pay compensation and return the goods or personal documents; or		
S. 401(cb) inserted by No. 45/2018 s. 276.	(cb)	in the case of an application under section 398, order that the owner of premises pay compensation for the loss or damage of the goods or documents; or		
	(d)	dismiss the application.		
S. 402 repealed by No. 45/2018 s. 277.	*	*	*	*
S. 403 repealed by No. 45/2018 s. 277.	*	*	*	*

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 in relation to—

- (a) an initial amount of bond paid by a renter at the commencement of a residential rental agreement; and
- (b) subsequent amounts of bond paid by a renter in relation to modifications of the rented premises (if any); and
- (c) additional amounts of bond required to be paid at agreed intervals under a residential rental agreement in the standard form for a fixed term of more than 5 years (if any);

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 residential rental provider and renter in accordance with section 405 for the purposes of lodgment of an amount of bond;

S. 404 def. of *amount of bond* inserted by No. 47/2012 s. 9(a), substituted by No. 45/2018 s. 278(3).

S. 404 def. of *bond lodgment form* inserted by No. 47/2012 s. 9(a), amended by No. 45/2018 s. 278(4).

Residential Tenancies Act 1997
No. 109 of 1997
Part 10—Bonds and the Residential Tenancies Bond Authority

S. 404 def. of
*bond
substitution
form*
inserted by
No. 47/2012
s. 9(a),
amended by
No. 45/2018
s. 278(5).

bond substitution form means a form completed and signed by a renter in accordance with section 410B for the purposes of lodgment of a substitute bond under that section;

S. 404 def. of
*Director of
Housing
voucher*
inserted by
No. 93/2003
s. 4,
amended by
Nos 67/2010
s. 61(a),
45/2018
s. 278(6).

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 renter or site tenant;

S. 404 def. of
landlord
amended by
Nos 67/2010
s. 61(b),
47/2012
s. 9(b),
repealed by
No. 45/2018
s. 278(2).

* * * * *

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;

renter includes—

- (a) a resident; and
- (b) a site tenant; and
- (c) in Divisions 3 and 4, a former renter,
a former resident and a former site
tenant;

S. 404 def. of
renter
inserted by
No. 45/2018
s. 278(1).

residential rental agreement includes a residency
right and a site agreement;

S. 404 def. of
*residential
rental
agreement*
inserted by
No. 45/2018
s. 278(1).

residential rental provider includes—

- (a) a rooming house operator;
- (b) a caravan park owner;
- (c) a caravan owner;
- (d) a site owner;
- (e) in Divisions 3 and 4, a former
residential rental provider, a former
rooming house operator, a former
caravan park owner, a former caravan
owner and a former site owner;
- (f) an agent of a residential rental provider
or a person referred to in paragraphs (a)
to (d);

S. 404 def. of
*residential
rental
provider*
inserted by
No. 45/2018
s. 278(1).

* * * * *

S. 404 def. of
*tenancy
agreement*
amended by
No. 67/2010
s. 61(d),
repealed by
No. 45/2018
s. 278(2).

Residential Tenancies Act 1997
No. 109 of 1997
Part 10—Bonds and the Residential Tenancies Bond Authority

S. 404 def. of *tenant* amended by No. 67/2010 s. 61(e)(f), repealed by No. 45/2018 s. 278(2).

* * * *

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).

S. 405(1) amended by Nos 67/2010 s. 149, 47/2012 s. 10(2), 45/2018 s. 279 (1)(a)(b)(2).

- (1) A residential rental provider who receives an amount of bond from a renter must at the time the amount of bond is paid—

S. 405(1)(a) substituted by No. 45/2018 s. 279(1)(c).

- (a) complete and sign a bond lodgment form in the form approved by the Authority for the type of bond being lodged; and

S. 405(1)(b) amended by No. 45/2018 s. 279(1)(b).

- (b) give the form to the renter to sign.

Penalty: 25 penalty units.

S. 405(2) amended by Nos 93/2003 s. 5, 45/2018 s. 279(3).

- (2) If the Director of Housing or an agent of the Director of Housing has paid an amount of bond on behalf of the renter, the bond lodgment form must state that fact.

S. 405(3) amended by Nos 47/2012 s. 10(3), 45/2018 s. 279(3).

- (3) The renter must sign the completed bond lodgment form on payment of the amount of bond.

- (4) On the signing by the renter of the bond lodgment form, the residential rental provider must give a copy of that form to the renter.

Penalty: 25 penalty units.

S. 405(4)
amended by
Nos 45/2002
s. 70(1),
67/2010 s. 149,
45/2018
s. 279(4)(5).

Note

Section 506(1)(da) provides that a document to be served on or given to a person under this Act may be served or given by electronic communication in accordance with the **Electronic Transactions (Victoria) Act 2000**.

Note to s. 405
inserted by
No. 45/2018
s. 279(6).

406 Duty to pay bond to Authority

If a residential rental provider receives an amount of bond from a renter, the residential rental provider 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: 150 penalty units.

S. 406
amended by
Nos 45/2002
s. 70(2),
67/2010 s. 150,
47/2012 s. 11,
45/2018 s. 280.

407 Receipt for bond

- (1) The Authority, within 7 days after receiving an amount of bond from a residential rental provider, must give a receipt containing the prescribed information to—

S. 407(1)
amended by
Nos 47/2012
s. 12(a),
45/2018
s. 281(1)(a).

- (a) the residential rental provider; and

S. 407(1)(a)
amended by
No. 45/2018
s. 281(1)(a).

- (b) the renter who paid the amount of bond; and

S. 407(1)(b)
amended by
Nos 47/2012
s. 12(b),
45/2018
s. 281(1)(b).

- (c) if an amount of bond was paid on behalf of the renter by the Director of Housing or an agent of the Director of Housing, the Director of Housing.

S. 407(1)(c)
amended by
Nos 93/2003
s. 6, 45/2018
s. 281(1)(b).

- (2) The receipt may be given in the manner determined by the Authority.

Note to s. 407
inserted by
No. 45/2018
s. 281(2).

Note

Section 506(1)(da) provides that a document to be served on or given to a person under this Act may be served or given by electronic communication in accordance with the **Electronic Transactions (Victoria) Act 2000**.

S. 408
amended by
Nos 47/2012
s. 13, 45/2018
s. 364(1).

408 Bond held on trust

A residential rental provider who receives an amount of bond from a renter holds the amount of bond on trust for the renter until the amount of bond is paid to the Authority.

S. 409
(Heading)
inserted by
No. 45/2018
s. 282(1).

409 What if the residential rental provider is late in lodging the bond?

S. 409(1)
amended by
Nos 45/2002
s. 71, 45/2018
s. 282(2).

- (1) A renter may notify the Authority if the renter does not receive a receipt from the Authority within 15 business days after giving the amount of bond to the residential rental provider.

S. 409(2)
amended by
No. 47/2012
s. 14,
repealed by
No. 45/2018
s. 282(3).

* * * * *

410 Payment of bond into Residential Bonds Account

The Authority must pay all money it receives under this Division into the Residential Bonds Account.

S. 410A
inserted by
No. 45/2002
s. 72,
amended by
Nos 93/2003
s. 7(2),
47/2012 s. 15,
substituted by
No. 45/2018
s. 283.

410A Payment of bond in prescribed manner and form

For the purposes of this Division, a residential rental provider receives an amount of bond from a renter if the renter gives the residential rental provider the amount of bond in the prescribed manner and form.

410B Payment of substitute bond

S. 410B
inserted by
No. 47/2012
s. 16.

- (1) A renter under a residential rental agreement may substitute an amount of bond paid by the renter and held by the Authority in relation to that residential rental agreement with an equivalent amount of bond paid on behalf of the renter by the Director of Housing or an agent of the Director of Housing (whether in the form of a Director of Housing voucher or otherwise). S. 410B(1)
amended by
No. 45/2018
s. 284(1).
- (2) For the purposes of subsection (1), a renter must— S. 410B(2)
amended by
No. 45/2018
s. 284(2)(a).
- (a) complete and sign a bond substitution form containing the prescribed information; and
- (b) give the substitute bond to the Authority, in the form approved by the Authority, together with the completed bond substitution form. S. 410B(2)(b)
amended by
No. 45/2018
s. 284(2)(b).
- (3) The Authority, within 7 days after receiving a substitute bond, must give a receipt to—
- (a) the residential rental provider under the residential rental agreement; and S. 410B(3)(a)
amended by
No. 45/2018
s. 284(3)(a)(b).
- (b) the renter; and S. 410B(3)(b)
amended by
No. 45/2018
s. 284(3)(c).
- (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.

**Note to
s. 410B
inserted by
No. 45/2018
s. 284(4).**

Note

Section 506(1)(da) provides that a document to be served on or given to a person under this Act may be served or given by electronic communication in accordance with the **Electronic Transactions (Victoria) Act 2000**.

**Pt 10 Div. 3
(Heading)
substituted by
No. 45/2018
s. 285.**

Division 3—Repayment of bonds

411 Claims for rental bonds

- (1) A claim may be made to the Authority for the repayment of a bond by—
- (a) a renter or that person's agent—
 - (i) for repayment of the bond to the renter;
or
 - (ii) for repayment of the bond to the residential rental provider; or
 - (iii) for apportionment of the bond as repayments to the renter and the residential rental provider; or
 - (b) the residential rental provider or that person's agent for repayment of the bond to the renter; or
 - (c) jointly by a residential rental provider and a renter (or either of those person's agents)—
 - (i) for repayment of the bond to the renter;
or
 - (ii) for repayment of the bond to the residential rental provider; or

**S. 411
amended by
Nos 93/2003
s. 8, 47/2012
s. 17,
substituted by
No. 45/2018
s. 286 (as
amended by
No. 47/2019
s. 85).**

- (iii) for apportionment of the bond as repayments to the renter and the residential rental provider.
- (2) A claim must—
 - (a) be in a form approved by the Authority; and
 - (b) include the address or email address of the claimant.
- (3) A claim must not be made before the termination of a residential rental agreement unless—
 - (a) it is made jointly by or on behalf of the residential rental provider and all of the renters; or
 - (b) it is made by or on behalf of the residential rental provider and directs that the bond be paid to all of the renters; or
 - (c) it is made by or on behalf of all of the renters and directs that the bond be paid to the residential rental provider.
- (4) If a claim is made under subsection (1)(c) for an amount of bond to be repaid to the residential rental provider, the claim form must be signed by the renters no earlier than 14 days before the termination date of the residential rental agreement.
- (5) A residential rental provider must not request or obtain a renter's signature to a claim form under this section if the claim form does not specify—
 - (a) the amount of bond to be refunded; and
 - (b) the apportionment (if any) of that amount of bond.

Penalty: 60 penalty units.

Note

Section 506(1)(da) provides that a document to be served on or given to a person under this Act may be served or given by electronic communication in accordance with the **Electronic Transactions (Victoria) Act 2000**.

S. 411A
inserted by
No. 93/2003
s. 9,
amended by
No. 47/2012
s. 18,
substituted by
No. 45/2018
s. 287 (as
amended by
No. 47/2019
ss 86, 98).

411A Notice of claim to be given to other parties

- (1) This section applies if a claim for the whole or part of a bond is made by a residential rental provider or a renter without the consent of all of the other parties to a residential rental agreement.
- (2) The Authority must give written notice of a claim referred to in subsection (1) to all of the other parties to the residential rental agreement known to the Authority.
- (3) The notice given by the Authority—
 - (a) may be addressed to one or more parties to the residential rental agreement; and
 - (b) must be given to the Director of Housing if the whole or part of the bond was paid by the Director of Housing; and
 - (c) must state that the Authority will pay the claim unless within 14 days after receiving notice under subsection (2) the party to the residential rental agreement gives written notice to the Authority that the claim is subject to an application to the Tribunal.

Note

Section 506(1)(da) provides that a document to be served on or given to a person under this Act may be served or given by electronic communication in accordance with the **Electronic Transactions (Victoria) Act 2000**.

411AB Matters that may be subject of bond claim

S. 411AB
inserted by
No. 45/2018
s. 287 (as
amended by
No. 47/2019
ss 86, 98).

- (1) Without limiting the matters for which a residential rental provider may claim from a bond, a residential rental provider is entitled to claim an amount of bond for the following—
 - (a) the reasonable cost of repairs to, or the restoration of, the rented premises or goods leased with the premises, as a result of damage caused by the renter or a renter's visitor, taking into account fair wear and tear;
 - (b) any rent or other charges owing and payable under the residential rental agreement or this Act;
 - (c) the reasonable cost of cleaning any part of the premises, if the premises were not left reasonably clean by the renter, having regard to the condition of the premises at the commencement of the residential rental agreement;
 - (d) the reasonable cost of replacing locks or other security devices altered, removed or installed by the renter without the consent of the residential rental provider;
 - (e) any other prescribed matter.
- (2) A residential rental provider is not entitled to claim an amount of bond for an amount owing or payable to the residential rental provider under an agreement referred to in section 53AA.

411AC Repayment of bond where no dispute

S. 411AC
inserted by
No. 45/2018
s. 287 (as
amended by
No. 47/2019
ss 86, 98).

The Authority must repay the amount of bond if—

- (a) the claim is made under section 411(1)(c); or

- (b) the claim is made by the residential rental provider or that person's agent under section 411(1)(b) for repayment of the bond to the renter; or
- (c) the claim is made by the renter or the renter's agent and directs the repayment of an amount to the residential rental provider; or
- (d) one or more of the following apply—
 - (i) the claim is made by the renter or the agent of the renter;
 - (ii) the claim is for payment to the party who made the claim or on whose behalf the claim was made;
 - (iii) no party to the residential rental agreement has notified the Authority of an application within 14 days after notice is given under section 411A(2).

S. 411AD
inserted by
No. 45/2018
s. 287 (as
amended by
No. 47/2019
ss 86, 98).

411AD Disputed bond claims

- (1) This section applies if the Authority is given notice, in a form approved by the Authority, by a party to a residential rental agreement that a claim for the repayment of bond is the subject of an application to the Tribunal.
- (2) The Authority may repay the amount of bond if—
 - (a) the party who disputes the claim has given the Authority written notice of the party's consent to the repayment of the bond; or
 - (b) any applicable order of the Tribunal requiring action before the repayment of the bond has been satisfied; or
 - (c) the Authority is notified by the Tribunal that the application has been withdrawn or dismissed.

- (3) The Authority must not repay an amount of a claim until any proceeding affecting a claim is finally determined, including any appeal.

411AE Repayment of bond to other persons

If directed to do so by a person to whom a bond is payable, the Authority may repay the whole or part of an amount of the bond to another person.

S. 411AE
inserted by
No. 45/2018
s. 287 (as
amended by
No. 47/2019
ss 86, 98).

411B Repayment out of Director of Housing bonds generally

- (1) This section applies if—

S. 411B
(Heading)
amended by
No. 45/2018
s. 288(1).

S. 411B
inserted by
No. 47/2012
s. 19.

- (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 renter;
and

S. 411B(1)(a)
amended by
No. 45/2018
s. 288(2)(a).

- (b) the Authority receives a new amount of bond in relation to a residential rental agreement—

S. 411B(1)(b)
amended by
No. 45/2018
s. 288(2)(b).

- (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 renter other than the renter referred to in paragraph (a);
and

S. 411B
(1)(b)(ii)
amended by
No. 45/2018
s. 288(2)(a).

- (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).

S. 411B(3)
amended by
No. 45/2018
s. 288(3).

(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 residential rental agreement for which the amount of bond referred to in subsection (1)(a) was paid, the Authority may pay to the renter the remaining amount of bond.

S. 411B(4)
inserted by
No. 45/2018
s. 288(4).

(4) The Director of Housing must return an amount of bond received under subsection (2) to the Authority if, after receipt of the amount, the Tribunal makes an order requiring the Authority to repay the bond to a person other than the Director of Housing.

S. 411C
inserted by
No. 47/2012
s. 20,
amended by
No. 45/2018
s. 364(2).

411C Refund of amount of substitute bond

If the Authority receives a substitute bond under section 410B, the Authority must pay to the renter under the residential rental agreement to which the substitute bond relates the amount of bond held by the Authority that the substitute bond replaces.

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S. 412
amended by
Nos 45/2002
s. 73(1),
93/2003 s. 10,
47/2012 s. 21,
repealed by
No. 45/2018
s. 289.

413 Payment to Director of Housing

- (1) The Authority must pay an amount of bond to the Director of Housing if the residential rental provider under the residential rental 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.

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- (2) The application must be made in a form and manner approved by the Authority.

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S. 413
(Heading)
inserted by
No. 47/2012
s. 22(1).

S. 413(1)
amended by
Nos 47/2012
s. 22(2),
45/2018
s. 364(3).

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
Nos 45/2002
s. 73(2),
47/2019 s. 58.

S. 413(3)
inserted by
No. 93/2003
s. 11(2),
repealed by
No. 47/2012
s. 22(3)(b).

S. 413A
(Heading)
amended by
No. 47/2012
s. 23(1).

S. 413A
inserted by
No. 93/2003
s. 12,
amended by
No. 47/2012
s. 23(2),
repealed by
No. 45/2018
s. 289.

Residential Tenancies Act 1997
No. 109 of 1997
Part 10—Bonds and the Residential Tenancies Bond Authority

S. 414 amended by No. 52/1998 s. 236(s), 45/2002 s. 74, repealed by No. 45/2018 s. 289.	*	*	*	*	*
S. 415 substituted by No. 52/1998 s. 237, repealed by No. 45/2018 s. 289.	*	*	*	*	*
S. 416 amended by No. 93/2003 s. 13, repealed by No. 45/2018 s. 289.	*	*	*	*	*
S. 417 amended by No. 45/2002 s. 75, repealed by No. 45/2018 s. 289.	*	*	*	*	*
S. 418 repealed by No. 45/2018 s. 289.	*	*	*	*	*
S. 419 amended by Nos 52/1998 s. 238(a), 47/2019 s. 95, repealed by No. 45/2018 s. 289.	*	*	*	*	*

419A Person with interest in claim for bond may apply to Tribunal for bond repayment order

S. 419A
inserted by
No. 45/2018
s. 290.

- (1) A residential rental provider, renter or any other person who has an interest in a claim for a bond (including a previous co-renter under the residential rental agreement) may apply to the Tribunal for an order requiring the Authority to repay the bond.
- (2) An application under subsection (1) must be made within 14 days after the residential rental agreement has terminated.
- (3) On an application under subsection (1), the Tribunal may make an order requiring the repayment of the bond by the Authority to any party for an amount that does not exceed the amount of bond held by the Authority.

420 Determination by Tribunal

S. 420
amended by
No. 45/2018
s. 291.

The Tribunal must determine any application made to it under section 419A.

420A Order by Tribunal if renter victim of family violence or personal violence

S. 420A
inserted by
No. 45/2018
s. 292.

- (1) This section applies if—
 - (a) the Tribunal is hearing an application for the repayment of bond; and
 - (b) there is more than one renter under a residential rental agreement; and
 - (c) the Tribunal is satisfied, having regard to any matter it considers appropriate, that one of the renters is a victim of family violence or personal violence.
- (2) For the purpose of subsection (1)(c), an applicant is not required to prove that a person has been convicted of an offence or is subject to a family violence safety notice, family violence

intervention order, recognised non-local DVO or personal safety intervention order.

- (3) If satisfied that one of the renters is a victim of family violence or personal violence, the Tribunal may order that—
- (a) liability is apportioned between renters, including making a renter who committed the family violence or personal violence liable for all of the residential rental provider's loss and damage including any unpaid rent (if any); and
 - (b) the portion of the bond paid by the renter who experienced family violence or personal violence is excluded from bond available to compensate the residential rental provider for loss and damage (if any).

S. 420B
inserted by
No. 45/2018
s. 292.

420B Order by Tribunal in circumstances of family violence or personal violence

- (1) This section applies if—
- (a) the Tribunal is hearing an application for the repayment of bond; and
 - (b) a renter under the residential rental agreement is or has been a victim of family violence or personal violence; and
 - (c) the alleged perpetrator of the family violence or personal violence is not a renter under the residential rental agreement.
- (2) The Tribunal may order that the victim of family violence or personal violence referred to in subsection (1) is not liable for any loss or damage suffered by the residential rental provider under the residential rental agreement if satisfied that—
- (a) the loss or damage was caused by the actions of the alleged perpetrator of the family violence or personal violence; and

- (b) a family violence safety notice, family violence intervention order, recognised non-local DVO or personal safety intervention order is in force.

420C Tribunal may order Authority to disclose personal information of renter

**S. 420C
inserted by
No. 45/2018
s. 292.**

- (1) The Tribunal may order the Authority to disclose to the residential rental provider, for a purpose referred to in subsection (2), any of the following information about a renter—
 - (a) the person's email address;
 - (b) the person's residential address;
 - (c) the person's facsimile number.
- (2) The purpose for which the Tribunal may disclose personal information under subsection (1) is to facilitate a residential rental provider serving any document on a renter.
- (3) A person must not disclose or use any personal information of a renter disclosed under this section for a purpose other than contacting the renter for a purpose referred to in this Act.

Penalty: 60 penalty units.

420D Order by Tribunal if renter who is SDA resident is coerced etc.

**S. 420D
inserted by
No. 19/2019
s. 217.**

If, on an application made to the Tribunal by a renter who is an SDA resident under section 91YA, the Tribunal makes an order in accordance with section 91YB(4), the Authority must pay out the bond to the renter or renters (as appropriate) in accordance with the order of the Tribunal.

421 Bond paid by Director of Housing

S. 421(1)
amended by
Nos 93/2003
s. 14(1),
45/2018
s. 364(4).

- (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 renter by the Director of Housing or an agent of the Director of Housing.

S. 421(2)
repealed by
No. 52/1998
s. 238(b).

* * * * *

S. 421(3)
amended by
No. 45/2018
s. 364(5).

- (3) The Authority must pay to the Director of Housing or an agent of the Director of Housing and not to the renter any amount of bond to which the renter is entitled under this Part if—

S. 421(3)(a)
amended by
Nos 93/2003
s. 14(2),
47/2012 s. 24,
45/2018
s. 364(5).

- (a) the bond lodgment form or bond substitution form states that the amount of bond was paid on behalf of the renter by the Director of Housing or an agent of the Director of Housing; or

S. 421(3)(b)
amended by
Nos 93/2003
s. 14(3),
45/2018
s. 364(5).

- (b) the Director of Housing advises the Authority in writing that the amount of bond was paid on behalf of a renter by the Director of Housing or an agent of the Director of Housing.

S. 422
amended by
No. 44/2008
s. 114(5).

422 Unclaimed money

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 amount of bond had not been paid out to another person on the fraudulent application of that other person.

S. 423(2)
amended by
Nos 45/2002
s. 76, 47/2012
s. 25.

Division 4—General provisions relating to bonds

424 Notification of assignment or transfer by residential rental provider

S. 424
(Heading)
inserted by
No. 45/2018
s. 293(1).

- (1) If a residential rental provider assigns or transfers the residential rental provider's rights and duties under a residential rental agreement to another person, the residential rental provider 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 residential rental agreement.

S. 424(1)
amended by
Nos 67/2010
s. 151, 47/2012
s. 26, 45/2018
s. 293(2)(3).

Penalty: 60 penalty units.

Residential Tenancies Act 1997
No. 109 of 1997
Part 10—Bonds and the Residential Tenancies Bond Authority

S. 424(2)
amended by
No. 45/2018
s. 293(4)(a).

(2) A notification under subsection (1) must—

S. 424(2)(a)
substituted by
No. 45/2018
s. 293(4)(b).

(a) be in a form approved by the Authority; and

S. 424(2)(b)
amended by
No. 45/2018
s. 293(4)(c).

(b) be signed by the residential rental provider
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,
substituted by
No. 45/2018
s. 293(5).

(3) The residential rental provider must give
the renter a copy of the notice under
subsection (1).

Penalty: 60 penalty units.

Note to s. 424
inserted by
No. 45/2018
s. 293(6).

Note

Section 506(1)(da) provides that a document to be served on or
given to a person under this Act may be served or given by
electronic communication in accordance with the **Electronic
Transactions (Victoria) Act 2000**.

S. 425
(Heading)
inserted by
No. 45/2018
s. 294(1).

425 Notice of assignment or transfer by renter

S. 425(1)
amended by
Nos 67/2010
s. 152, 47/2012
s. 27, 45/2018
s. 294(2)(3).

(1) If a renter assigns or transfers any of the renter's
rights and duties under a residential rental
agreement to another person, the residential rental
provider and the renter 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 residential rental agreement.

Penalty: 60 penalty units.

(2) A notice under subsection (1) must—

(a) be in a form approved by the Authority; and

S. 425(2)(a)
substituted by
No. 45/2018
s. 294(4)(a).

(b) be signed by the renter, the residential rental provider and the person to whom the rights and duties are assigned or transferred; and

S. 425(2)(b)
amended by
No. 45/2018
s. 294(4)(b).

(c) be given to the Authority within 5 days after the assignment or transfer takes effect.

Note

Section 506(1)(da) provides that a document to be served on or given to a person under this Act may be served or given by electronic communication in accordance with the **Electronic Transactions (Victoria) Act 2000**.

Note to s. 425
inserted by
No. 45/2018
s. 294(5).

426 Agent to produce authorisation on request

An agent for a residential rental provider must, at the request of the Authority, produce evidence of the agent's authorisation to act as agent under this Part.

S. 426
amended by
No. 45/2018
s. 295(1).

Note

Section 506(1)(da) provides that a document to be served on or given to a person under this Act may be served or given by electronic communication in accordance with the **Electronic Transactions (Victoria) Act 2000**.

Note to s. 426
inserted by
No. 45/2018
s. 295(2).

427 Authority to record names

(1) The Authority must register—

(a) the name of each residential rental provider and renter who appears on the bond lodgment form for an amount of bond; and

S. 427(1)(a)
amended by
Nos 47/2012
s. 28(a),
45/2018
s. 296(1)(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),
amended by
No. 45/2018
s. 296(1)(b).

(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 renter—

(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 renter under section 411C; and

S. 427
(1)(ab)(iii)
amended by
No. 45/2018
s. 296(1)(b).

(b) the name of each assignee or transferee of whom the Authority is given notice under section 424 or 425.

S. 427(2)
substituted by
No. 45/2018
s. 296(2).

(2) The Authority must not repay an amount of bond to any person unless the name of that person is registered under subsection (1), except—

(a) in the prescribed circumstances; or

(b) in accordance with an order of the Tribunal.

Note to s. 427
inserted by
No. 45/2018
s. 296(3).

Note

Section 506(1)(da) provides that a document to be served on or given to a person under this Act may be served or given by electronic communication in accordance with the **Electronic Transactions (Victoria) Act 2000**.

S. 428
(Heading)
inserted by
No. 45/2018
s. 297(1).

428 Renter must not use bond as rent

A renter must not refuse to pay rent on the ground that the renter intends to regard as rent paid by the renter the bond or any part of the bond paid in respect of the rented premises.

Penalty: 60 penalty units.

S. 428
amended by
Nos 67/2010
s. 153, 45/2018
s. 297(2)(3).

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;

S. 431(ca)
inserted by
No. 93/2003
s. 16,
amended by
No. 47/2012
s. 29.

(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;

S. 431(cb)
inserted by
No. 93/2003
s. 16.

(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;

S. 431(cc)
inserted by
No. 47/2019
s. 59.

(cc) to disclose the information (including names of persons) referred to in paragraph (ca) to the Director, for the purpose of the Director carrying out any function under this Act, whether that information was collected before, on or after the commencement of this paragraph.

(d) to carry out any other function conferred on it by this Act.

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.

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.

**S. 434
amended by
No. 46/1998
s. 7(Sch. 1).**

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.

S. 436(2A)
inserted by
No. 45/2018
s. 298.

- (2A) Any loss from an investment of the Residential Bonds Account and the Residential Bonds Investment Income Account must be deducted from or otherwise adjusted in 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

S. 438(1)
amended by
No. 11/2001
s. 3(Sch.
item 63.1).

- (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**.

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.

Pt 10A
(Heading and
ss 439A–
439M)
inserted by
No. 67/2010
s. 90.

Part 10A—Residential tenancy databases

S. 439A
inserted by
No. 67/2010
s. 90.

439A Definitions

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;

S. 439A def. of
inaccurate
amended by
No. 45/2018
s. 365(3).

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 residential rental
provider an amount that is more than
the bond; and
- (b) the amount owed was paid to the
residential rental provider more than 3
months after the amount became due;

S. 439A def. of
landlord
repealed by
No. 45/2018
s. 365(2).

* * * * *

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—

S. 439A def. of *out of date* amended by No. 45/2018 s. 365(4).

- (a) for a listing made on the basis the person owes a residential rental provider an amount that is more than the bond, the amount owed was paid to the residential rental provider 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;

renter includes—

- (a) resident; and
- (b) site tenant; and
- (c) former renter, former resident or former site tenant;

S. 439A def. of *renter* inserted by No. 45/2018 s. 365(1) (as amended by No. 47/2019 s. 88).

S. 439A def. of
*residential
rental
agreement*
inserted by
No. 45/2018
s. 365(1) (as
amended by
No. 47/2019
s. 88).

residential rental agreement includes residency
right and site agreement;

S. 439A def. of
*residential
rental
provider*
inserted by
No. 45/2018
s. 365(1) (as
amended by
No. 47/2019
s. 88).

residential rental provider includes—

- (a) rooming house operator;
- (b) caravan park owner;
- (c) caravan owner;
- (d) site owner;
- (e) agent of a residential rental provider
or a person referred to in paragraphs (a)
to (d);

S. 439A def. of
*residential
tenancy
database*
amended by
No. 45/2018
s. 365(5).

residential tenancy database means a database—

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

Residential Tenancies Act 1997
No. 109 of 1997
Part 10A—Residential tenancy databases

*	*	*	*	*	S. 439A def. of <i>tenancy agreement</i> repealed by No. 45/2018 s. 365(2).
*	*	*	*	*	S. 439A def. of <i>tenant</i> repealed by No. 45/2018 s. 365(2).
439B Application					S. 439B inserted by No. 67/2010 s. 90.
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.					
439C Notice of usual use of database					S. 439C inserted by No. 67/2010 s. 90.
(1) This section applies if—					
(a) a person (the <i>applicant</i>) applies to a residential rental provider to enter into a residential rental agreement; and					S. 439C(1)(a) amended by No. 45/2018 s. 299(1).
(b) the residential rental provider usually uses one or more residential tenancy databases for deciding whether a residential rental agreement should be entered into with a person.					S. 439C(1)(b) amended by No. 45/2018 s. 299(1).
(2) The residential rental provider must, when the application is made, give the applicant written notice stating the following—					S. 439C(2) amended by No. 45/2018 s. 299(2)(a)(3).
(a) the name of each residential tenancy database the residential rental provider usually uses, or may use, for deciding whether a residential rental agreement should be entered into with a person;					S. 439C(2)(a) amended by No. 45/2018 s. 299(2).

S. 439C(2)(b)
amended by
No. 45/2018
s. 299(2)(a).

- (b) that the reason the residential rental provider 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: 60 penalty units.

S. 439C(3)
amended by
No. 45/2018
s. 299(4).

- (3) Subsection (2) applies in relation to a residential tenancy database whether or not the residential rental provider intends to use the database for deciding whether a residential rental agreement should be entered into with the applicant.

S. 439C(4)
amended by
No. 45/2018
s. 299(5).

- (4) However, the residential rental provider 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 to
s. 439C(4)
amended by
No. 45/2018
s. 299(6).

Example

The residential rental provider 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.

S. 439D
inserted by
No. 67/2010
s. 90.

439D Notice of listing if database used

- (1) This section applies if—

S. 439D(1)(a)
amended by
No. 45/2018
s. 300(1).

- (a) a person (the *applicant*) applies to a residential rental provider to enter into a residential rental agreement; and

- (b) the residential rental provider uses a residential tenancy database for checking whether personal information about the applicant is in the database; and S. 439D(1)(b)
amended by
No. 45/2018
s. 300(1)(a).
- (c) personal information about the applicant is in the database.
- (2) The residential rental provider must, as soon as possible but within 7 days after using the database, give the applicant a written notice stating— S. 439D(2)
amended by
No. 45/2018
s. 300(2)(3).
- (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: 60 penalty units.
- (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

S. 439E
inserted by
No. 67/2010
s. 90.

- (1) A residential rental provider or database operator must not list personal information about a person in a residential tenancy database unless— S. 439E(1)
amended by
No. 45/2018
s. 301(1)(a).
- (a) the person was named as a renter in a residential rental agreement that has ended; and S. 439E(1)(a)
amended by
No. 45/2018
s. 301(1)(b)(c).
- and

S. 439E(1)(b)
amended by
No. 45/2018
ss 301(1)(c),
240A(Sch. 1
item 27) (as
amended by
No. 47/2019
ss 83, 90).

(b) the person has breached the residential rental agreement or section 91ZI, 91ZJ, 91ZM, 91ZO, 91ZQ, 91ZV, 142ZB, 142ZC, 142ZF, 142ZG, 142ZI, 206AQ, 206AR, 206AU, 206AW, 206AY, 207W, 207X, 207ZA, 207ZC or 207ZD; and

S. 439E(1)(c)(i)
amended by
No. 45/2018
s. 301(1)(a).

(c) because of the breach, either—

(i) the person owes the residential rental provider 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 to
s. 439E(2)
amended by
No. 45/2018
s. 301(2).

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 residential rental 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 residential rental agreement by damaging premises.

S. 439E(3)
inserted by
No. 45/2018
s. 301(3).

(3) A residential rental provider or database operator must not list personal information about a person in a residential tenancy database if—

(a) the person breached the residential rental agreement; and

- (b) that breach was a result of an act or a circumstance of family violence or personal violence experienced by the person.

439F Further restriction on listing

S. 439F
inserted by
No. 67/2010
s. 90.

- (1) A residential rental provider or database operator must not list personal information about a person in a residential tenancy database unless the residential rental provider 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.

S. 439F(1)
amended by
No. 45/2018
s. 302(1)(2).

Penalty: 60 penalty units.

- (2) A residential rental provider or database operator must not list personal information about a person in a residential tenancy database unless the residential rental provider 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.

S. 439F(2)
amended by
No. 45/2018
s. 302(3)(4).

Penalty: 60 penalty units.

- (3) A residential rental provider or database operator must not list personal information about a person in a residential tenancy database unless the residential rental provider or operator has considered any submissions made under subsection (2).

S. 439F(3)
amended by
No. 45/2018
s. 302(5)(6).

Penalty: 60 penalty units.

S. 439F(4)
amended by
No. 45/2018
s. 302(7).

(4) Subsections (1) and (2) do not apply if the residential rental provider 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. 439F(6)
inserted by
No. 45/2018
s. 302(8).

(6) A residential rental provider or database operator must not list personal information about a person in a residential tenancy database if the information relates to—

(a) termination of a residential rental agreement and entry into a new residential rental agreement as a result of an order under section 91W; or

(b) a notice to vacate that the Tribunal found is invalid under section 91ZZT, 91ZZV, 142ZY, 142ZZA, 206AZN, 206AZP or 207O.

S. 439F(7)
inserted by
No. 45/2018
s. 302(8).

(7) A residential rental provider or database operator must not list personal information about a person in a residential tenancy database if—

(a) the person has objected to the residential rental provider, that person's agent or the database operator about the listing of information on the database because the information relates to an act or a circumstance of family violence or personal violence experienced by the person; and

(b) the objection is accompanied by a copy of any prescribed documentary evidence.

439G Ensuring quality of listing—residential rental provider's obligation

S. 439G
(Heading)
amended by
No. 45/2018
s. 303(1).

S. 439G
inserted by
No. 67/2010
s. 90.

- (1) This section applies if a residential rental provider who lists personal information in a residential tenancy database becomes aware that the information—
- (a) is inaccurate, incomplete, ambiguous or out of date; or
 - (b) relates to an act or a circumstance of family violence or personal violence experienced by the person whose personal information is listed.
- (2) The residential rental provider 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;
 - (c) if the information relates to an act or circumstance of family violence or personal violence experienced by the person whose personal information is listed—

S. 439G(1)
substituted by
No. 45/2018
s. 303(2).

S. 439G(2)
amended by
No. 45/2018
s. 303(3)(a)(4).

S. 439G(2)(b)
amended by
No. 45/2018
s. 303(3)(b).

S. 439G(2)(c)
inserted by
No. 45/2018
s. 303(3)(c).

- (i) that the information relates to an act or a circumstance of family violence or personal violence experienced by the person whose personal information is listed; and
- (ii) that the information must be removed.

Penalty: 150 penalty units in the case of a natural person;
750 penalty units in the case of a body corporate.

Example to
s. 439G(2)
amended by
No. 45/2018
s. 303(5).

Example

A residential rental provider lists, in a residential tenancy database, personal information about a renter who owes the residential rental provider an amount that is more than the bond. The renter pays the amount owed to the residential rental provider more than 3 months after the amount became due. The residential rental provider must, within 7 days after the residential rental provider 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.

S. 439G(3)
amended by
No. 45/2018
s. 303(6)(7).

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

Penalty: 25 penalty units.

S. 439H
inserted by
No. 67/2010
s. 90.

439H Ensuring quality of listing—database operator's obligation

S. 439H(1)
amended by
No. 45/2018
s. 304(1).

- (1) This section applies if a residential rental provider 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.

S. 439H(2)
amended by
No. 45/2018
s. 304(2).

Penalty: 150 penalty units in the case of a natural person;
750 penalty units in the case of a body corporate.

439I Providing copy of personal information listed

S. 439I
inserted by
No. 67/2010
s. 90.

- (1) A residential rental provider 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.

S. 439I(1)
amended by
No. 45/2018
s. 305(1)(2).

Penalty: 60 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 residential rental provider 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.

S. 439I(3)
amended by
No. 45/2018
s. 305(2).

S. 439(4)
amended by
No. 45/2018
s. 305(3)(a).

(4) A fee charged by a residential rental provider 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

S. 439(4)(b)
amended by
No. 45/2018
s. 305(3)(b).

(b) must not apply to lodging a request for accessing the information; and

S. 439(4)(c)
inserted by
No. 45/2018
s. 305(3)(c).

(c) must not apply to the first instance of a database operator and a residential rental provider giving personal information to a person under subsection (2) within any 12 month period.

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: 150 penalty units in the case of a natural person;
750 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.

S. 439K(1)
amended by
No. 45/2018
s. 306.

(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**

S. 439L(1)
amended by
No. 45/2018
s. 307(1).

(1) A person may apply to the Tribunal for an order—

S. 439L(1)(a)
amended by
No. 45/2018
s. 307(1).

(a) prohibiting a residential rental provider or a
database operator from listing personal
information about that person that a
residential rental provider or database
operator proposes to list on a residential
tenancy database; or

S. 439L(1)(b)
amended by
No. 45/2018
s. 307(1).

(b) requiring a residential rental provider or a
database operator to amend personal
information about that person that is listed or
to be listed in a residential tenancy database;
or

S. 439L(1)(c)
amended by
No. 45/2018
s. 307(1).

(c) requiring a residential rental provider or a
database operator to remove personal
information about that person that is listed in
a residential tenancy database—

if the residential rental provider 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.

- (2A) A person who is a victim of family violence or personal violence may apply to the Tribunal for an order requiring a residential rental provider, that person's agent or a database operator to remove or not list personal information about the person in a residential tenancy database. **S. 439L(2A) inserted by No. 45/2018 s. 307(2).**
- (2B) A person may apply to the Tribunal for an order requiring a database operator to amend a listing of personal information on a residential tenancy database or to remove any information. **S. 439L(2B) inserted by No. 45/2018 s. 307(2).**
- (2C) A person may apply to the Tribunal for an order requiring a residential rental provider, that person's agent or a database operator to remove or not list personal information about the person. **S. 439L(2C) inserted by No. 45/2018 s. 307(2).**
- (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) Subject to subsections (1A), (1B) and (1C), if an application is made under section 439L, the Tribunal may make an order— **S. 439M(1) amended by No. 45/2018 s. 308(1)(a).**

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No. 109 of 1997
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S. 439M(1)(a)
amended by
No. 45/2018
s. 308(1)(b).

- (a) prohibiting a residential rental provider, that person's agent or database operator from listing personal information about the applicant in a residential tenancy database; or

S. 439M(1)(b)
amended by
No. 45/2018
s. 308(1)(b).

- (b) requiring a residential rental provider, that person's agent or database operator to amend personal information about the applicant that is or is to be listed in a residential tenancy database; or

S. 439M(1)(c)
amended by
No. 45/2018
s. 308(1)(b).

- (c) requiring a residential rental provider, that person's agent or database operator to remove personal information about the applicant that is listed in a residential tenancy database.

S. 439M(1A)
inserted by
No. 45/2018
s. 308(2).

- (1A) Before making an order under subsection (1) in respect of an application under section 439L(2A), the Tribunal is to be satisfied that a breach of a residential rental agreement by the person was a result of family violence or personal violence committed by another person.

S. 439M(1B)
inserted by
No. 45/2018
s. 308(2).

- (1B) Before making an order under subsection (1) in respect of an application under section 439L(2B), the Tribunal is to be satisfied that the personal information poses a risk to the person's personal safety because it is listed.

S. 439M(1C)
inserted by
No. 45/2018
s. 308(2).

- (1C) Before making an order under subsection (1) in respect of an application under section 439L(2C), the Tribunal is to be satisfied that the listing is or would be unjust in all of the circumstances, having regard to—
 - (a) the reason the information is listed; and
 - (b) the conduct of the renter; and

- (c) whether there is a real likelihood that the listing would have a disproportionate impact on the ability of the renter to access future rental accommodation.
- (2) The Tribunal may make an order under subsection (1) if the Tribunal determines that—
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| (a) the residential rental provider has not provided written notice to the applicant in accordance with section 439D(2); or | S. 439M(2)(a) amended by No. 45/2018 s. 308(3). |
| (b) the residential rental provider or database operator has listed personal information in the residential tenancy database in contravention of section 439E or 439F; or | S. 439M(2)(b) amended by No. 45/2018 s. 308(3). |
| (c) the residential rental provider has not provided written notice in accordance with section 439G in respect of personal information in the residential tenancy database that the residential rental provider is aware is inaccurate, incomplete, ambiguous or out of date; or | S. 439M(2)(c) amended by No. 45/2018 s. 308(3). |
| (d) the database operator has not amended or removed personal information listed in a residential tenancy database in accordance with section 439H(2). | S. 439M(2)(d) amended by No. 43/2012 s. 3(Sch. item 42.2). |

Pt 10B
(Headings
and ss 439O–
439U)
inserted by
No. 45/2018
s. 310 (as
amended by
No. 1/2021
s. 99).

Part 10B—Rental Non-compliance Register

S. 439O
inserted by
No. 45/2018
s. 310 (as
amended by
No. 1/2021
s. 99).

439O Definitions

In this Part—

registrable residential rental provider means a residential rental provider who the Director must register on the Rental Non-compliance Register under section 439P(2);

rented premises includes room, site, caravan and Part 4A site;

residential rental provider includes—

- (a) rooming house operator;
- (b) caravan park owner;
- (c) caravan owner;
- (d) site owner;
- (e) agent of a residential rental provider or a person referred to in paragraphs (a) to (d).

S. 439P
inserted by
No. 45/2018
s. 310 (as
amended by
No. 1/2021
s. 99).

439P Rental Non-compliance Register

- (1) The Director must establish and maintain a register of registrable residential rental providers to be known as the Rental Non-compliance Register.
- (2) The Director must enter in the Rental Non-compliance Register any information specified in subsection (3) that is given to the Director by the Tribunal in respect of a residential rental provider if—

- (a) the Tribunal has made an order under Part 5 that the residential rental provider must—
 - (i) remedy a breach; or
 - (ii) pay compensation; or
 - (iii) refrain from committing a breach; or
 - (b) the residential rental provider has committed an offence under this Act.
- (3) For the purposes of subsection (2), the information is—
- (a) the name of the residential rental provider; and
 - (b) the address of the rented premises in respect of which the order was made or the offence was committed; and
 - (c) if the residential rental provider has an agent, the business name and business address of the agent; and
 - (d) if the Tribunal has made an order under Part 5 that the residential rental provider remedy a breach, pay compensation or refrain from committing a breach—
 - (i) the date of the order; and
 - (ii) the provision of this Act that the residential rental provider was found to have breached; and
 - (e) if the person has committed an offence under this Act—
 - (i) the date of the conviction or finding of guilt; and
 - (ii) the relevant provision of this Act; and

- (f) any other information the Director determines is relevant to the order, conviction or finding of guilt.

S. 439Q
inserted by
No. 45/2018
s. 310 (as
amended by
No. 1/2021
s. 99).

439Q Form of Rental Non-compliance Register

- (1) The Rental Non-compliance Register may be kept in any form the Director considers appropriate.
- (2) The Director may publish the Rental Non-compliance Register, or any details in the Register, in any manner or form that the Director considers appropriate.

S. 439R
inserted by
No. 45/2018
s. 310 (as
amended by
No. 1/2021
s. 99).

439R Restriction on listing personal information

- (1) The Director must not list personal information about a person on the Rental Non-compliance Register unless the Director 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.
- (2) The Director must not list personal information about a person on the Rental Non-compliance Register unless the Director has given the person at least 14 days to review the personal information and make submissions—
 - (a) objecting to its entry on the Register; or
 - (b) about its accuracy, completeness and clarity.
- (3) The Director must not list personal information about a person on the Rental Non-compliance Register unless the Director has considered any submissions made under subsection (2).
- (4) Subsections (1) and (2) do not apply if the Director 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 439T.

439S Personal information must not be kept on Rental Non-compliance Register for more than 3 years

S. 439S
inserted by
No. 45/2018
s. 310 (as
amended by
No. 1/2021
s. 99).

- (1) The Director must not keep information about a residential rental provider on the Rental Non-compliance Register for longer than 3 years.
- (2) This section does not limit the operation of this Part or a provision of another law that requires the removal of personal information.

439T Application to Tribunal for removal or amendment of listing

S. 439T
inserted by
No. 45/2018
s. 310 (as
amended by
No. 1/2021
s. 99).

- (1) A person may apply to the Tribunal for an order requiring the Director to amend or remove information about the person that is listed on the Rental Non-compliance Register.
- (2) The Tribunal may make an order requiring the Director to amend or remove information about a person that is listed on the Rental Non-compliance Register if the Tribunal is satisfied that—
 - (a) the Director did not—
 - (i) give the person a copy of the information under section 439R(1)(a); or
 - (ii) take other reasonable steps to disclose the information to the person under section 439R(1)(b); or

- (b) the information has been on the Rental Non-compliance Register for longer than 3 years; or
 - (c) information about the person that is listed on the Rental Non-compliance Register is incorrect.
- (3) If the Tribunal makes an order under subsection (2), it may also order the Director to publish a statement on the Rental Non-compliance Register that—
- (a) the Register contained information about the person that was incorrect; and
 - (b) the Director has corrected the information on the Register.

S. 439U
inserted by
No. 45/2018
s. 310 (as
amended by
No. 1/2021
s. 99).

439U What can the Tribunal order?

- (1) On an application under section 439T, the Tribunal, if satisfied as to the matters specified in subsection (2), may make an order—
- (a) prohibiting the Director from listing information about the applicant on the Rental Non-compliance Register; or
 - (b) requiring the Director to amend information about the applicant that is or is to be listed on the Rental Non-compliance Register; or
 - (c) requiring the Director to remove information about the applicant that is listed on the Rental Non-compliance Register.
- (2) For the purposes of subsection (1), the specified matters are—
- (a) the Director has not given the applicant an opportunity to make submissions in accordance with section 439R(2); or

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No. 109 of 1997
Part 10B—Rental Non-compliance Register

- (b) the Director has listed information in the
Rental Non-compliance Register
in contravention of section 439R.

Pt 11
(Heading)
substituted by
No. 52/1998
s. 238(c).

Part 11—Functions of Tribunal

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).

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Division 2—Jurisdiction of Tribunal

446 Jurisdiction of Tribunal

The Tribunal has jurisdiction to hear and determine an application under this Act relating to—

S. 446(a)
amended by
No. 45/2018
s. 366(1).

(a) any matter arising in relation to a residential rental agreement or a proposed residential rental agreement of premises situated in Victoria; and

(b) any matter arising in relation to a residency right under this Act; and

S. 446(ba)
inserted by
No. 67/2010
s. 62.

(ba) any matter arising in relation to a site agreement or a proposed site agreement in respect of a Part 4A site; and

S. 446(bb)
inserted by
No. 56/2012
s. 9.

(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

S. 446(bc)
inserted by
No. 38/2018
s. 302 (as
amended by
No. 19/2019
s. 236(1)).

- (c) any matter referred to it under this Act.

447 Limits of jurisdiction of Tribunal

- (1) Subject to subsection (3), the Tribunal must not—

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S. 447(1)(a)
repealed by
No. 45/2002
s. 83(1).

- (b) hear and determine an application for a compensation order which involves a monetary claim exceeding \$40 000, or in the case of the site agreement provisions or a Part 4A dwelling purchase agreement, \$100 000;

S. 447(1)(b)
amended by
Nos 67/2010
s. 63(1),
56/2012
s. 10(1),
45/2018
s. 311(a).

- (c) make a determination requiring or authorising the payment of an amount that exceeds \$40 000, 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),
45/2018
s. 311(a).

- (d) make a determination requiring or authorising the carrying out of works, the estimated cost of which exceeds \$40 000, 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),
45/2018
s. 311(a).

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—

S. 447(1A)(a)
substituted by
No. 45/2018
s. 311(b).

(a) by a residential rental provider or renter under a residential rental agreement which involves a monetary claim for an amount exceeding \$40 000; or

S. 447(1A)(b)
amended by
No. 45/2018
s. 311(c).

(b) by a rooming house operator 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 \$20 000; or

S. 447(1A)(c)
amended by
Nos 67/2010
s. 63(2)(a),
45/2018
s. 311(d).

(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 \$20 000; or

S. 447(1A)(d)
inserted by
No. 67/2010
s. 63(2)(b),
amended by
No. 56/2012
s. 10(2).

(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.

(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).

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452 General applications to the Tribunal

S. 452(1)
amended by
No. 45/2018
s. 312(1).

- (1) A residential rental provider or a renter under a residential rental agreement may apply to the Tribunal if—

S. 452(1)(a)
amended by
No. 45/2018
s. 312(1)(c).

- (a) a dispute has arisen under the residential rental agreement; or

S. 452(1)(b)
amended by
No. 45/2018
s. 312(1)(c).

- (b) there has been a breach of the residential rental agreement or of the provisions of this Act relating to the residential rental agreement.

S. 452(2)
amended by
No. 45/2018
s. 312(2).

- (2) A rooming house operator 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.

S. 452(3AA)
inserted by
No. 45/2018
s. 312(3).

- (3AA) A renter may apply to the Tribunal if the residential rental provider has breached any of the disclosure requirements in section 30D.

S. 452(3AB)
inserted by
No. 45/2018
s. 312(3).

- (3AB) A resident of a rooming house may apply to the Tribunal if the rooming house operator has breached any of the disclosure requirements in section 94I.

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| (3AC) A resident of a caravan park may apply to the Tribunal if the caravan owner or the caravan park owner has breached any of the disclosure requirements in section 145E. | S. 452(3AC)
inserted by
No. 45/2018
s. 312(3). |
| (3AD) A site tenant may apply to the Tribunal if the site owner has breached any of the disclosure requirements in section 206JF. | S. 452(3AD)
inserted by
No. 45/2018
s. 312(3). |
| (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— | S. 452(3A)
inserted by
No. 67/2010
s. 64. |
| (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. | S. 452(3B)
inserted by
No. 38/2018
s. 303(1). |
| (4) A person may apply to the Tribunal in relation to any dispute in respect of any amount paid to a proposed residential rental provider under section 50. | S. 452(4)
amended by
No. 45/2018
s. 312(4). |

S. 452(5)
amended by
No. 45/2018
s. 312(5).

(5) A person who is not a residential rental provider or renter under a residential rental agreement may with the leave of the Tribunal apply to the Tribunal in relation to the residential rental agreement.

S. 452(6)
amended by
No. 45/2018
s. 312(6).

(6) A person who is not a caravan park resident or caravan park owner or caravan owner or rooming house resident or rooming house operator may with the leave of the Tribunal apply to the Tribunal in relation to a residency right.

S. 452(6A)
inserted by
No. 38/2018
s. 303(2).

(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.

S. 452(7)
amended by
No. 45/2018
s. 312(7).

(7) Leave must not be granted unless the Tribunal is satisfied that the person has an interest and personal involvement in the residential rental 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.

S. 452(9)
inserted by
No. 45/2018
s. 312(8).

(9) Without limiting the matters which the Tribunal may consider, the Tribunal must consider the Director's guidelines in determining an application under this section.

Ss 453–471
repealed by
No. 52/1998
s. 238(g).

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Division 4—Orders of Tribunal

Pt 11 Div. 4
(Heading)
amended by
No. 52/1998
s. 238(h).

472 General power of Tribunal to make determinations

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| (1) The Tribunal, on an application to or in proceedings before it, may make any orders it thinks fit— | S. 472(1)
amended by
Nos 52/1998
s. 238(i),
11/2002
s. 3(Sch. 1
item 56.2). |
| (a) to restrain any action in breach of a residential rental agreement or the provisions of this Act relating to a residential rental agreement; | S. 472(1)(a)
amended by
No. 45/2018
s. 313(a). |
| (b) to require any action in the performance of a residential rental agreement or of duties under this Act relating to the residential rental agreement; | S. 472(1)(b)
amended by
No. 45/2018
s. 313(a). |
| (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. |

S. 472(1)(dd)
inserted by
No. 56/2012
s. 12.

(dd) for the return of a Part 4A dwelling under a rescinded Part 4A dwelling purchase agreement;

(e) for the return of goods unlawfully taken or removed from—

S. 472(1)(e)(i)
amended by
No. 45/2018
s. 313(b)(i).

(i) rented premises by a party to the residential rental agreement; or

S. 472(1)(e)(ii)
amended by
No. 45/2018
s. 313(b)(ii).

(ii) a room by a rooming house operator or resident; or

S. 472(1)(e)(iii)
amended by
No. 67/2010
s. 65(b).

(iii) a caravan or site by a caravan owner, caravan park owner or resident; or

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)(fb)
inserted by
No. 45/2018
s. 313(c).

(fb) declaring that a term of a residential rental agreement is invalid under section 27;

S. 472(1)(fc)
inserted by
No. 45/2018
s. 313(c).

(fc) declaring that a term of a fixed term rooming house agreement is invalid under section 94AC or a term of an agreement under section 94(2) is invalid under section 94(3);

S. 472(1)(fd)
inserted by
No. 45/2018
s. 313(c).

(fd) declaring that a term of an agreement under section 144 is invalid under section 144(4) or (4A);

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| (fe) declaring that a term of a site agreement is invalid under section 206F(4); | S. 472(1)(fe) inserted by No. 45/2018 s. 313(c). |
| (g) that are ancillary or incidental to any other orders that it makes. | S. 472(1)(g) amended by No. 52/1998 s. 238(i). |
| (1A) Without limiting this section, the Tribunal, on an application or in a proceeding before it for a contravention of section 30E, may make any orders it thinks fit, including the following— | S. 472(1A) inserted by No. 47/2019 s. 60. |
| (a) an order terminating the residential rental agreement; | S. 472(1A)(a) amended by No. 45/2018 s. 366(1A) (as amended by No. 47/2019 s. 89). |
| (b) an order requiring the payment of compensation to any person. | |
| (1B) Subsection (1A)(a) applies despite the operation of section 91B. | S. 472(1B) inserted by No. 47/2019 s. 60. |
| (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 residential rental agreements affect same premises | S. 473 (Heading) inserted by No. 45/2018 s. 366(2). |
| (1) If there are 2 or more residential rental agreements in respect of the same premises and the rights of the residential rental provider and renter 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— | S. 473(1) amended by Nos 52/1998 s. 238(j)(i), 45/2018 s. 366 (3)(a)(b)(c). |

S. 473(1)(a)
amended by
No. 45/2018
s. 366(3)(d).

(a) to give effect to the rights under this Act of the renter in possession under a residential rental agreement; and

S. 473(1)(b)
amended by
Nos 52/1998
s. 238(j)(ii),
45/2018
s. 366(3)(b)(e).

(b) subject to that first order, to give effect to the rights under this Act of each renter and each residential rental provider of the premises.

S. 473(2)
amended by
No. 45/2018
s. 366(4).

(2) This section applies only to residential rental 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).

* * * * *

S. 479
substituted by
No. 52/1998
s. 239(1).

479 Review of certain determinations and orders

(1) This section applies to—

(a) a determination made by the Tribunal under section 415;

(ab) a determination made by the Tribunal under section 91ZZT, 142ZY or 206AZN.

S. 479(1)(ab)
inserted by
No. 45/2002
s. 84,
amended by
No. 45/2018
ss 314(1)(a),
240A(Sch. 1
item 28) (as
amended by
No. 47/2019
ss 83, 90).

S. 479(1)(b)
repealed by
No. 45/2018
s. 314(1)(b).

* * * * *

- (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 renter 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. 479(3)
amended by
No. 45/2018
s. 314(2).

480 Offence to fail to comply with determination of Tribunal

S. 480
repealed by
No. 52/1998
s. 238(k),
new s. 480
inserted by
No. 45/2002
s. 85.

- (1) A person to whom a determination of the Tribunal under this Act applies must comply with that determination.

S. 480(1)
amended by
No. 67/2010
s. 154.

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**.

New s. 481
inserted by
No. 45/2018
s. 315.

481 Tribunal may order agent to provide details of residential rental provider

- (1) The Tribunal, in any proceeding, may make an order requiring an agent of a residential rental provider to provide, for the purposes of the proceeding, the following information about the residential rental provider—
 - (a) the residential rental provider's full name;
 - (b) if the residential rental provider is a corporation—
 - (i) the provider's ABN or ACN; and
 - (ii) the address of the provider's registered office;
 - (c) if the residential rental provider is not a corporation, the provider's street address.
- (2) A person to whom an order of the Tribunal under this section applies must comply with that order.

* * * * *

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).

Residential Tenancies Act 1997
No. 109 of 1997
Part 11—Functions of Tribunal

* * * * *

Pt 11 Div. 6
(Heading and
s. 485)
amended by
No. 52/1998
s. 238(l),
11/2001
s. 3(Sch.
item 63.2),
repealed by
No. 45/2018
s. 316.

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;

S. 486(a)(iii)
amended by
No. 45/2018
s. 317(a).

(iii) any complaint made by a renter under a residential rental agreement that the residential rental provider 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)(i)
amended by
No. 45/2018
s. 317(b).

(i) any other dispute in relation to a residential rental agreement between a residential rental provider and a renter that is referred by the residential rental provider or the renter;

S. 486(b)(ii)
amended by
No. 67/2010
s. 83(a).

(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 residential rental agreements; S. 486(f) amended by No. 45/2018 s. 317(c).
- (fa) to issue guidelines; S. 486(fa) inserted by No. 45/2018 s. 317(d).
- (g) to conduct research into matters relating to residential rental agreements, rooming houses, caravan parks or Part 4A parks and to disseminate that research; S. 486(g) amended by No. 45/2018 s. 317(e).

- (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 residential rental agreements, rooming houses, caravan parks or Part 4A parks or publishing the results of that research;
- (ha) to administer the Rent Special Account;
- (hb) to monitor compliance with this Act;
- (i) any other functions conferred on the Director by or under this Act.

S. 486(h)(iii)
amended by
No. 45/2018
s. 317(f).

S. 486(ha)
inserted by
No. 45/2018
s. 317(g).

S. 486(hb)
inserted by
No. 45/2018
s. 317(g).

S. 486A
inserted by
No. 45/2018
s. 318 (as
amended by
No. 19/2019
s. 238).

486A Director may approve documentary evidence

- (1) For the purposes of sections 91ZZO(e), 142ZT(e), 206AZI(e) and 498ZX(1)(h), (ha) and (k), the Director, from time to time, may approve documentary evidence which supports the reason for giving a notice to vacate under a section referred to in each of those sections.

(2) The Director must publish the approval of documentary evidence as soon as practicable after it is approved—

- (a) in the Government Gazette; and
- (b) on an Internet site maintained by the Director.

486B Further functions of Director in relation to SDA enrolled dwellings

S. 486B
inserted by
No. 38/2018
s. 305.

(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
- (f) to maintain a list recording the details of SDA residency agreements the Director is notified of under section 498F(5).

S. 486B(1)(e)
amended by
No. 19/2019
s. 149(a).

S. 486B(1)(f)
inserted by
No. 19/2019
s. 149(b).

- (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. 486C
inserted by
No. 38/2018
s. 305.

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.

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.

- (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.

S. 490(1A)
inserted by
No. 38/2018
s. 306.

- (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 residential rental agreements, rooming houses, caravan parks or Part 4A parks or publishing the results of that research.

S. 495(c)
amended by
No. 45/2018
s. 319.

* * * * *

Ss 496–498
repealed by
No. 45/2018
s. 320.

498A Director may authorise payment for certain legal costs

S. 498A
inserted by
No. 52/1998
s. 239(2).

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 12 Div. 3
(Heading and
s. 498AB)
inserted by
No. 45/2018
s. 321.

Division 3—Rent Special Account

S. 498AB
inserted by
No. 45/2018
s. 321.

498AB Director to administer Rent Special Account

- (1) The Director must establish a trust account to be called the "Rent Special Account".
- (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.
- (3) Money in the Rent Special Account may be paid out only in accordance with section 77, 134, 193 or 206ZZAF.
- (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 Director must open and maintain accounts at an ADI for the purposes of the Rent Special Account.

Pt 12 Div. 4
(Heading and
ss 498AC–
498AI)
inserted by
No. 45/2018
s. 321.

Division 4—Pecuniary penalties

S. 498AC
inserted by
No. 45/2018
s. 321.

498AC Magistrates' Court may make orders under this Division

The Director may apply to the Magistrates' Court for an order under this Division.

498AD Pecuniary penalties

**S. 498AD
inserted by
No. 45/2018
s. 321.**

- (1) The Magistrates' Court may order a person to pay into the Residential Tenancies Fund a pecuniary penalty if the court is satisfied that the person—
 - (a) has contravened a pecuniary penalty provision; or
 - (b) has attempted to contravene a pecuniary penalty provision; or
 - (c) has intentionally assisted, encouraged or directed another person to contravene a pecuniary penalty provision; or
 - (d) entered into an agreement, arrangement or understanding with another person to contravene a pecuniary penalty provision; or
 - (e) has induced, or attempted to induce, a person, whether by threats or promises or otherwise, to contravene a pecuniary penalty provision; or
 - (f) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of a pecuniary penalty provision; or
 - (g) has conspired with others to contravene a pecuniary penalty provision.
- (2) The Magistrates' Court may order the person to pay a pecuniary penalty for each act or omission under subsection (1) as the court considers appropriate.
- (3) In determining the appropriate pecuniary penalty, the Magistrates' Court must have regard to the following—
 - (a) the nature and extent of the act or omission and of any loss or damage suffered as a result of the act or omission;

- (b) the circumstances in which the act or omission took place;
 - (c) whether the person has previously been found by a court in any proceeding under this Division to have engaged in any similar conduct.
- (4) The pecuniary penalty payable under this section for a contravention of a pecuniary penalty provision must not exceed—
 - (a) for a pecuniary penalty provision set out in Part 1 of Schedule 1A—
 - (i) in the case of a natural person—\$40 000;
 - (ii) in the case of a body corporate—\$200 000;
 - (b) for a pecuniary penalty provision set out in Part 2 of Schedule 1A—
 - (i) in the case of a natural person—\$60 000;
 - (ii) in the case of a body corporate—\$300 000.
- (5) If a person's conduct constitutes a contravention of 2 or more pecuniary penalty provisions—
 - (a) a proceeding may be commenced under this section against the person in relation to the contravention of any one or more of the provisions; and
 - (b) the person is not liable to more than one pecuniary penalty under this section for the same conduct.

498AE Pecuniary penalties and offences

**S. 498AE
inserted by
No. 45/2018
s. 321.**

- (1) The Magistrates' Court must not make an order under section 498AD against a person in relation to a residential rights contravention if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.
- (2) Any proceeding for an order under section 498AD against a person in relation to a pecuniary penalty provision is stayed if—
 - (a) a criminal proceeding commences or has already commenced against the person for an offence; and
 - (b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the residential rights contravention.
- (3) A proceeding for an order under section 498AD that has been stayed under subsection (2)—
 - (a) may be resumed if the person is not convicted of the offence; or
 - (b) is dismissed if the person is convicted of the offence.
- (4) A criminal proceeding may be commenced against a person for conduct that is substantially the same as conduct constituting a residential rights contravention regardless of whether an order under section 498AD has been made against the person in respect of the contravention.
- (5) Subject to subsection (6), evidence of information given, or evidence of the production of documents, by an individual is not admissible in any criminal proceeding against the individual if—

- (a) the individual previously gave the evidence or produced the documents in any proceeding for an order under section 498AD against the individual in relation to a residential rights contravention (whether or not the order was made); and
 - (b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the contravention.
- (6) Subsection (5) does not apply to a criminal proceeding in respect of the falsity of the evidence given by the individual in the proceeding for the order.

S. 498AF
inserted by
No. 45/2018
s. 321.

498AF Individuals acting honestly and reasonably

If, in a proceeding under section 498AD against an individual, it appears to the Magistrates' Court that the person has, or may have, engaged in conduct constituting a residential rights contravention but that the person acted honestly and reasonably and, having regard to all the circumstances of the case, ought fairly to be excused, the Court may relieve the person either wholly or partly from liability to a pecuniary penalty.

S. 498AG
inserted by
No. 45/2018
s. 321.

498AG Preference must be given to compensation for victims

The Magistrates' Court must give preference to making an order for compensation if the Court considers that—

- (a) it is appropriate to order a person to pay a pecuniary penalty under section 498AD in relation to a residential rights contravention; and

- (b) it is appropriate to order the person to pay compensation to another person who has suffered loss or damage as a result of that contravention; and
- (c) the person does not have sufficient financial resources to pay both the pecuniary penalty and the compensation.

498AH Civil action for recovery of pecuniary penalties

S. 498AH
inserted by
No. 45/2018
s. 321.

- (1) The Director may commence a proceeding in the Magistrates' Court for the recovery on behalf of the State of a pecuniary penalty.
- (2) A proceeding under subsection (1) may be commenced at any time within 6 years after the contravention or conduct.

498AI Indemnification of officers

S. 498AI
inserted by
No. 45/2018
s. 321.

- (1) A body corporate (the *first body*), or a body corporate related to the first body, must not indemnify a person (whether by agreement or by making a payment and whether directly or through an interposed entity) against either of the following liabilities if the person incurred them as an officer of the first body—
 - (a) a liability to pay a pecuniary penalty under section 498AD;
 - (b) legal costs incurred in defending or otherwise being a party to any proceeding in which the person is found to have such a liability.

Penalty: 30 penalty units.

- (2) For the purposes of subsection (1)(b), the outcome of a proceeding includes any appeal in relation to the proceeding.

- (3) Anything that purports to indemnify a person against a liability is void to the extent that it contravenes this section.
- (4) In this section—
officer has the same meaning as in the Corporations Act.

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;

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).

S. 498B def. of
NDIS
behaviour
support plan
inserted by
No. 19/2019
s. 150(1).

NDIS behaviour support plan has the same meaning as in the **Disability Act 2006**;

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;

S. 498B def. of
registered
NDIS provider
inserted by
No. 19/2019
s. 150(1).

registered NDIS provider has the same meaning as in the National Disability Insurance Scheme Act 2013 of the Commonwealth;

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);

S. 498B def. of
SDA provider
amended by
No. 19/2019
s. 150(2).

SDA provider means a person—

- (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;

S. 498B def. of *standard form* inserted by No. 19/2019 s. 150(1).

Supported Independent Living provider means a registered NDIS provider that provides supported independent living assistance;

S. 498B def. of *Supported Independent Living provider* substituted by No. 19/2019 s. 150(3).

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. 498C
inserted by
No. 38/2018
s. 293.

498C When does Part not apply to occupation of SDA enrolled dwelling

S. 498C(1)
amended by
No. 45/2018
s. 380.

- (1) Subject to Division 2, nothing in this Part affects the right of any of the following persons to enter into a residential rental 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.

S. 498C(2)
amended by
Nos 19/2019
s. 151, 45/2018
s. 380.

- (2) If an SDA provider and SDA resident have entered into a residential rental 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 residential rental agreement continues.

Pt 12A Div. 2
(Heading)
amended by
No. 19/2019
s. 152.

Division 2—Provision of information and notices

S. 498D
inserted by
No. 38/2018
s. 293.

498D Information statement required to be given to SDA resident

S. 498D(1)
amended by
No. 19/2019
s. 153(1)(2).

- (1) An SDA provider must give an SDA resident an information statement, in the form approved by the Director, at least 7 days before—

S. 498D(1)(a)
amended by
No. 45/2018
s. 381(1).

- (a) entering into a residential rental agreement with the SDA resident; or
- (b) entering into an SDA residency agreement with the SDA resident; or

- (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 residential rental agreement with a renter; and

S. 498D(2)(a) amended by No. 45/2018 s. 381.

(b) the renter 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.

S. 498D(2)(b) amended by No. 45/2018 s. 381(2).

- (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.

498DA Notice of revocation of registration or enrolment

S. 498DA inserted by No. 19/2019 s. 154.

- (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

S. 498DA(1)
(b)(iii)
amended by
No. 19/2019
s. 213(1).

(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 residential rental agreement, that the SDA resident may give the residential rental provider a reduced period of notice of intention to vacate the SDA enrolled dwelling under section 91ZB; 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 residential rental agreement, that the SDA resident may give the residential rental provider a reduced period of

S. 498DA(2)
(b)(iii)
amended by
No. 19/2019
s. 213(2).

notice of intention to vacate the SDA
enrolled dwelling under section 91ZB;
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.

498E Explaining notices or information given to SDA residents under this Part

S. 498E
inserted by
No. 38/2018
s. 293.

- (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—

S. 498E(4)
amended by
No. 19/2019
s. 155.

- (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 considers can assist the SDA resident and is not employed by, or a representative of, the SDA provider.

S. 498EA
inserted by
No. 19/2019
s. 156.

498EA Explanation of Tribunal orders

- (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

S. 498F
inserted by
No. 38/2018
s. 293.

498F Agreement for provision of SDA enrolled dwelling

- (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.

- (6) A written notice specified in subsection (5) must state the following details—

S. 498F(6)
inserted by
No. 19/2019
s. 157.

- (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.

498G Working with SDA resident to establish an SDA residency agreement

S. 498G
inserted by
No. 38/2018
s. 293.

- (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).

S. 498G(3)
amended by
No. 19/2019
s. 158.

- (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 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.

S. 498H
inserted by
No. 38/2018
s. 293,
amended by
No. 19/2019
s. 159.

498H Copy of SDA residency agreement to be made available to SDA resident

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.

S. 498I
inserted by
No. 38/2018
s. 293.

498I SDA residency agreements to be in standard form

- (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.
- (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. 498I(2)
amended by
No. 19/2019
s. 160.

498J Content of SDA residency agreement

S. 498J
inserted by
No. 38/2018
s. 293.

- (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.

S. 498K
inserted by
No. 38/2018
s. 293.

498K Invalid terms

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

- (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.
- (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.

S. 498L
inserted by
No. 38/2018
s. 293.

S. 498L(3)
substituted by
No. 19/2019
s. 161.

Division 3A—Disclosures and representations prior to entering into SDA residency agreement

Pt 12A Div. 3A
(Heading and
ss 498LA–
498LC)
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—

S. 498LA
inserted by
No. 19/2019
s. 162.

- (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.

S. 498LB
inserted by
No. 19/2019
s. 162.

498LB Information that SDA provider must disclose before entering SDA residency agreement

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.

498LC Misleading or deceptive conduct inducing a person to enter an SDA residency agreement

S. 498LC
inserted by
No. 19/2019
s. 162.

- (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

S. 498M
inserted by
No. 38/2018
s. 293,
amended by
No. 19/2019
s. 163(2) (ILA
s. 39B(1)).

- (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

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).

- (d) take reasonable measures to ensure the security of an SDA enrolled dwelling; and
- (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.
- (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.
- (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.

S. 498M(1)(f)
substituted by
No. 19/2019
s. 163(1)(b).

S. 498M(2)
inserted by
No. 19/2019
s. 163(2).

S. 498M(3)
inserted by
No. 19/2019
s. 163(2).

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

S. 498N
inserted by
No. 38/2018
s. 293.

(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(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).

(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—

S. 498N(3)
inserted by
No. 19/2019
s. 164(3).

- (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

498O Application and definition

- (1) This Division does not apply to fixtures, furniture or equipment supplied by the SDA resident.

S. 498O
inserted by
No. 38/2018
s. 293.

(2) In this Division—

S. 498O(2)
def. of *chosen person*
amended by
No. 19/2019
s. 165.

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. 498P
inserted by
No. 38/2018
s. 293.

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(3)
inserted by
No. 19/2019
s. 166.

S. 498Q
inserted by
No. 38/2018
s. 293.

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—

- (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).

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.

S. 498R
inserted by
No. 38/2018
s. 293.

- (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.

S. 498S
inserted by
No. 38/2018
s. 293.

498S What can the Tribunal order?

- (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.

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
inserted by
No. 38/2018
s. 293.

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.

S. 498V
inserted by
No. 38/2018
s. 293.

498V Grounds for entry of SDA enrolled dwelling

- (1) A right of entry in respect of an SDA enrolled dwelling may be exercised if—

S. 498V(1)(a)
amended by
No. 45/2018
s. 382.

- (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 residential rental 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.
- (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.
- (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(2)(a)
amended by
No. 19/2019
s. 170(1).

S. 498V(3)
substituted by
No. 19/2019
s. 170(2).

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.

S. 498V(3B)
inserted by
No. 19/2019
s. 170(3).

(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.

- (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.
- (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. 498V(5)
inserted by
No. 19/2019
s. 170(4).

498W Manner of entry

S. 498W
inserted by
No. 38/2018
s. 293.

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.

498X What must be in a notice of entry?

S. 498X
inserted by
No. 38/2018
s. 293.

- (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).

S. 498Y
inserted by
No. 38/2018
s. 293.

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. 498Z
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.

Division 7—Rent

498ZA Rent

An SDA provider may charge an SDA resident rent.

S. 498ZA
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
inserted by
No. 38/2018
s. 293.

- (1A) The notice of proposed rent increase must include—

S. 498ZB(1A)
inserted by
No. 19/2019
s. 172.

- (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.

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.

S. 498ZC
inserted by
No. 38/2018
s. 293,
amended by
No. 19/2019
s. 173.

Penalty: 60 penalty units.

498ZD Where and how is rent to be paid?

S. 498ZD
inserted by
No. 38/2018
s. 293,
amended by
No. 19/2019
s. 174(1)(2)
(ILA s. 39B(1)).

- (1) Subject to this section, the rent under an SDA residency agreement is payable in the manner (if any) specified in the agreement.

S. 498ZD(2)
inserted by
No. 19/2019
s. 174(2).

- (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.

S. 498ZD(3)
inserted by
No. 19/2019
s. 174(2).

- (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.

S. 498ZD(4)
inserted by
No. 19/2019
s. 174(2).

- (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.

S. 498ZD(5)
inserted by
No. 19/2019
s. 174(2).

- (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.

S. 498ZD(6)
inserted by
No. 19/2019
s. 174(2).

- (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

SDA resident consents to use the payment method.

498ZE Receipts for rent

S. 498ZE
inserted by
No. 38/2018
s. 293.

- (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—

S. 498ZE(1)
amended by
No. 19/2019
s. 175(1).

- (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.

- (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—

S. 498ZE(2)
amended by
No. 19/2019
s. 175(2).

- (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.

S. 498ZE(3)
amended by
No. 19/2019
s. 175(3).

- (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.
- 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.

S. 498ZF
inserted by
No. 38/2018
s. 293,
amended by
No. 19/2019
s. 176.

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.

498ZG SDA resident may complain to Director about excessive rent

S. 498ZG
inserted by
No. 38/2018
s. 293.

- (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.

498ZH Disputes relating to increase in rent

S. 498ZH
inserted by
No. 38/2018
s. 293.

- (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.

S. 498ZI
inserted by
No. 38/2018
s. 293.

498ZI What can the Tribunal order on an application relating to increase in rent

- (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.

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.

S. 498ZJ
inserted by
No. 38/2018
s. 293.

(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.

S. 498ZK
inserted by
No. 38/2018
s. 293.

498ZK Payment of increased amount pending Tribunal decision

- (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.

- (1) A person must not demand or receive from an SDA resident any bond in relation to the SDA residency agreement.

S. 498ZL(1)
amended by
No. 19/2019
s. 177(1).

Penalty: 60 penalty units.

- (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.

S. 498ZL(2)
amended by
No. 19/2019
s. 177(2).

Penalty: 60 penalty units.

- (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.

S. 498ZL(3)
amended by
No. 19/2019
s. 177(3).

Penalty: 60 penalty units.

- (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.

S. 498ZL(4)
amended by
No. 19/2019
s. 177(4).

Penalty: 60 penalty units.

- (5) A person must not demand or receive from an SDA resident a charge or indemnity for a charge in relation to—

S. 498ZL(5)
amended by
No. 19/2019
s. 177(6).

- (a) the first issue of a rent payment card under an SDA residency agreement; or

S. 498ZL(5)(b)
amended by
No. 19/2019
s. 177(5).

- (b) the establishment or use of direct debit facilities or any other electronic payment facility for payment of rent under an SDA residency agreement.

Penalty: 60 penalty units.

- (6) This section does not prevent the charging of a prescribed charge under an SDA residency agreement.

S. 498ZM
inserted by
No. 38/2018
s. 293,
amended by
No. 19/2019
s. 178(2) (ILA
s. 39B(1)).

498ZM SDA provider's liability for various utility charges

- (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).

S. 498ZM(2)
inserted by
No. 19/2019
s. 178(2).

- (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.

Example

Excessive usage charges caused by a leak in the underground pipe of a water service connected to an SDA enrolled dwelling.

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.

S. 498ZN
inserted by
No. 38/2018
s. 293,
amended by
No. 19/2019
s. 179.

Division 9—Compensation and compliance

498ZO Definitions

In this Division—

breach of duty notice means a notice served under section 498ZP;

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. 498ZO
inserted by
No. 38/2018
s. 293.

S. 498ZO
def. of *breach
of duty notice*
inserted by
No. 19/2019
s. 180(2).

S. 498ZO
def. of *duty
provision*
amended by
No. 19/2019
s. 180(1).

S. 498ZP
inserted by
No. 38/2018
s. 293.

498ZP Breach of duty notice

S. 498ZP(2)
amended by
No. 19/2019
s. 181(1).

(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(2A)
inserted by
No. 19/2019
s. 181(2).

(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—

- (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.

S. 498ZR
(Heading)
amended by
No. 19/2019
s. 182(1).

498ZR Matters to be considered by Tribunal

- (1) The Tribunal, in hearing an application under section 498ZQ, may take into account—

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
 - (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;

S. 498ZR(2)
inserted by
No. 19/2019
s. 182(3).

- (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. 498ZS
inserted by
No. 38/2018
s. 293.

498ZS Orders of Tribunal

- (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

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. 498ZT
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. 498ZU
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;

S. 498ZV
inserted by
No. 38/2018
s. 293.

S. 498ZV
(1)(ca)
inserted by
No. 19/2019
s. 184(1)(a).

S. 498ZV(1)(e)
substituted by
No. 19/2019
s. 184(1)(b).

- (d) it is for the SDA resident's safety or wellbeing;
- (e) the SDA resident has caused serious damage or destroyed any part of the SDA enrolled dwelling;
- (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.

- (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—

S. 498ZV(2A)
inserted by
No. 19/2019
s. 184(2).

- (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.

S. 498ZV(4)
amended by
No. 19/2019
s. 184(3)(4).

- (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.

Penalty: 60 penalty units.

S. 498ZV(5)
amended by
No. 19/2019
s. 184(5)(6).

- (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.

Penalty: 60 penalty units.

S. 498ZV(6)
amended by
No. 19/2019
s. 184(7).

- (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(7)
amended by
No. 19/2019
s. 184(8).

- (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).

- (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.

S. 498ZV(9)(b)
amended by
No. 19/2019
s. 184(9).

Division 10—Termination and notices to vacate

498ZW Termination of SDA residency agreement

S. 498ZW
inserted by
No. 38/2018
s. 293,
amended by
No. 19/2019
s. 185(4) (ILA
s. 39B(1)).

- (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
(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.
- (2) For the purposes of subsection (1)(j), an SDA resident must give an SDA provider a notice of intention to terminate.
- (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.
- (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.

**S. 498ZW(2)
inserted by
No. 19/2019
s. 185(4).**

**S. 498ZW(3)
inserted by
No. 19/2019
s. 185(4).**

**S. 498ZW(4)
inserted by
No. 19/2019
s. 185(4).**

S. 498ZW(5)
inserted by
No. 19/2019
s. 185(4).

- (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. 498ZWA
inserted by
No. 19/2019
s. 186.

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. 498ZX
inserted by
No. 38/2018
s. 293.

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

- (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
- (e) the SDA resident can no longer be appropriately supported in the SDA enrolled dwelling; or
- (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
- (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

S. 498ZX(1)(e)
substituted by
No. 19/2019
s. 187(1).

S. 498ZX(1)(f)
substituted by
No. 19/2019
s. 187(1).

S. 498ZX(1)(h)
amended by
No. 19/2019
s. 187(2)(a).

Note

See section 498ZZZPA.

Note to
s. 498ZX(1)(h)
inserted by
No. 19/2019
s. 187(3).

- (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

S. 498ZX
(1)(ha)
inserted by
No. 19/2019
s. 187(2)(b).

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.

- (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(4A)
inserted by
No. 19/2019
s. 187(5).

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

S. 498ZX
(6)(ab)
inserted by
No. 19/2019
s. 187(6).

(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

S. 498ZX
(6)(ac)
inserted by
No. 19/2019
s. 187(6).

(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

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.
- (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(7) amended by No. 19/2019 s. 187(7)(8).
- (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(8) amended by No. 19/2019 s. 187(9)(10).
- (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. 498ZX(9) amended by No. 19/2019 s. 187(11).

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

S. 498ZY inserted by No. 38/2018 s. 293.

- (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).

S. 498ZZ
inserted by
No. 38/2018
s. 293.

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.

S. 498ZZA
inserted by
No. 38/2018
s. 293.

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.

- (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;
 - (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;
 - (d) the Director.
- S. 498ZZA(4)
amended by
No. 19/2019
s. 188(a).
- S. 498ZZA
(4)(c)
amended by
No. 19/2019
s. 188(b).
- S. 498ZZA
(4)(d)
inserted by
No. 19/2019
s. 188(c).

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.
- (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.
- S. 498ZZB
inserted by
No. 38/2018
s. 293.
- S. 498ZZB(4)
inserted by
No. 19/2019
s. 189.

S. 498ZZC
inserted by
No. 38/2018
s. 293.

498ZZC Application to the Tribunal for review of notice to vacate

- (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.

498ZZCA Notice by owner

**S. 498ZZCA
inserted by
No. 19/2019
s. 190.**

- (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.

498ZZD Notice to vacate by mortgagee

**S. 498ZZD
inserted by
No. 38/2018
s. 293.**

- (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.

S. 498ZZD(3)
amended by
No. 19/2019
s. 191(1)(2).

- (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.

Penalty: 60 penalty units.

S. 498ZZD(4)
amended by
No. 19/2019
s. 191(3)(4).

- (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.

Penalty: 60 penalty units.

Division 11—Regaining possession—possession orders and warrants

Subdivision 1—Applications for possession orders

S. 498ZZE
inserted by
No. 38/2018
s. 293.

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.

- (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.

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 inserted by No. 38/2018 s. 293, amended by No. 19/2019 s. 192 (ILA s. 39B(1)).

S. 498ZZF(2) inserted by No. 19/2019 s. 192.

S. 498ZZG
inserted by
No. 38/2018
s. 293.

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. 498ZZH
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.

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).

- (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 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

S. 498ZZH
(4)(b)
amended by
No. 19/2019
s. 193(3)(a).

(c) in the circumstances of the particular application, it is reasonable and proportionate having regard to section 498ZZHA.

S. 498ZZH
(4)(c)
inserted by
No. 19/2019
s. 193(3)(b).

498ZZHA What is reasonable and proportionate

S. 498ZZHA
inserted by
No. 19/2019
s. 194.

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.

S. 498ZZI
inserted by
No. 38/2018
s. 293.

498ZZI Order to be dismissed or adjourned in certain circumstances

- (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.

- (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.

S. 498ZZJ(1A)
inserted by
No. 19/2019
s. 195.

- (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.

498ZZK Order not to be made in certain circumstances

S. 498ZZK
inserted by
No. 38/2018
s. 293.

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.

S. 498ZZL
inserted by
No. 38/2018
s. 293.

498ZZL Effect of possession order for SDA enrolled dwelling

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.

S. 498ZZM
inserted by
No. 38/2018
s. 293.

498ZZM What must the possession order provide?

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.

498ZZO Effect of this Subdivision

S. 498ZZO
inserted by
No. 38/2018
s. 293.

This Subdivision has effect despite anything to the contrary in any other provision of this Act.

Subdivision 2—Warrants of possession

498ZZP Issue of warrant of possession

S. 498ZZP
inserted by
No. 38/2018
s. 293.

- (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.

S. 498ZZR
inserted by
No. 38/2018
s. 293.

498ZZR Warrant of possession

- (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.

498ZZS Lapsing of possession order and lapsing or cancellation of warrant of possession

S. 498ZZS
inserted by
No. 38/2018
s. 293.

- (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.

498ZZT Execution of warrant

S. 498ZZT
inserted by
No. 38/2018
s. 293.

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).

S. 498ZZV
inserted by
No. 38/2018
s. 293,
substituted by
No. 19/2019
s. 197.

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.

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—

- (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;

S. 498ZZX
inserted by
No. 38/2018
s. 293.

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.

S. 498ZZZ
inserted by
No. 38/2018
s. 293.

498ZZZ Disposal of personal documents after 90 days

- (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

- (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.

S. 498ZZZA
inserted by
No. 38/2018
s. 293.

- (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

498ZZZB Application of Subdivision

This Subdivision does not apply to personal documents.

S. 498ZZZB
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—

S. 498ZZZC
inserted by
No. 38/2018
s. 293.

- (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.

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.

498ZZZG Former SDA resident may request proceeds of sale of goods

S. 498ZZZG
inserted by
No. 38/2018
s. 293,
substituted by
No. 19/2019
s. 202.

- (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.

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

S. 498ZZZJ
inserted by
No. 38/2018
s. 293.

498ZZZJ What if goods or documents are disposed of in contravention of this Division?

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.

498ZZZM What if an SDA enrolled dwelling owner refuses to store goods for more than 14 days?

S. 498ZZZM
inserted by
No. 38/2018
s. 293,
substituted by
No. 19/2019
s. 204.

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.

498ZZZN What orders can the Tribunal make?

S. 498ZZZN
inserted by
No. 38/2018
s. 293.

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

S. 498ZZZO
inserted by
No. 38/2018
s. 293,
amended by
No. 19/2019
s. 206.

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. 498ZZZP
inserted by
No. 38/2018
s. 293.

498ZZZP Offence to obtain possession etc. of SDA enrolled dwelling

S. 498ZZZP(1)
amended by
No. 19/2019
s. 207(1).

- (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.

- (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.

S. 498ZZZP(2)
amended by
No. 19/2019
s. 207(2).

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

498ZZZPA Prohibition on letting premises used for SDA enrolled dwelling after notice

S. 498ZZZPA
inserted by
No. 19/2019
s. 208.

- (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.

S. 498ZZZQ
(Heading)
amended by
No. 19/2019
s. 209(1).

498ZZZQ Offence to make false or fraudulent representation—SDA residency agreement

S. 498ZZZQ
inserted by
No. 38/2018
s. 293,
amended by
No. 19/2019
s. 209(2)–(4)
(ILA s. 39B(1)).

(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.

S. 498ZZZQ(2)
inserted by
No. 19/2019
s. 209(4).

(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.

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. 498ZZZR inserted by No. 38/2018 s. 293, amended by No. 19/2019 s. 210.

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. 498ZZZS inserted by No. 38/2018 s. 293, amended by No. 19/2019 s. 211.

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

- (e) a person employed under Part 3 of the
Public Administration Act 2004 in the
administration of this Act; 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).

- (f) a person to whom the Director had delegated
a function or power under this Act.

- (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.

S. 499(2)
amended by
Nos 67/2010
s. 155, 45/2018
s. 329(1).

Penalty: 150 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

S. 499(3)(a)(ia)
inserted by
No. 45/2018
s. 329(2).

(ia) to a law enforcement agency or other government agency, for a purpose referred to in clause 2.1(g) and (h) of Schedule 1 to the **Privacy and Data Protection Act 2014**; 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.

Residential Tenancies Act 1997
No. 109 of 1997
Part 13—General

*	*	*	*	*	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—residential rental agreement or residency right					S. 501 (Heading) inserted by No. 45/2018 s. 330(1).
A person must not make, in relation to a residential rental agreement, a proposed residential rental agreement, a site agreement, a proposed site agreement or a residency right, a false and fraudulent misrepresentation as to—					S. 501 amended by Nos 67/2010 ss 67(a), 156, 45/2018 s. 330(2)(3).
(a) a provision of this Act; or					
(b) a term included or to be included in the residential rental agreement or site agreement; or					S. 501(b) amended by Nos 67/2010 s. 67(b), 45/2018 s. 330(2).
(c) a matter affecting a person's rights or duties under this Act or a residential rental agreement, proposed residential rental agreement, site agreement or proposed site agreement.					S. 501(c) amended by Nos 67/2010 s. 67(c), 45/2018 s. 330(2)..
Penalty: 150 penalty units in the case of a natural person;					
750 penalty units in the case of a body corporate.					

S. 502
amended by
Nos 67/2010
ss 68(a), 157,
45/2018
s. 331(1)(a)(2).

502 Offence to persuade person not to exercise rights or take proceedings

A person must not, in relation to a residential rental agreement, a proposed residential rental agreement, a site agreement, a proposed site agreement or a residency right, by threat or intimidation persuade or attempt to persuade—

S. 502(a)
amended by
No. 45/2018
s. 331(1)(a).

(a) a party to the residential rental agreement or proposed residential rental agreement; or

(b) a resident; or

S. 502(c)
amended by
No. 45/2018
s. 331(1)(b).

(c) a rooming house operator; or

S. 502(d)
amended by
No. 67/2010
s. 68(b).

(d) a caravan owner or a caravan park owner; or

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: 150 penalty units in the case of a natural person;

750 penalty units in the case of a body corporate.

S. 503
amended by
Nos 67/2010
ss 69, 158,
45/2018 s. 332.

503 Offence to aid, abet, counsel or procure commission of offence

A person must not in relation to a residential rental agreement, a proposed residential rental 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: 150 penalty units in the case of a natural person;
750 penalty units in the case of a body corporate.

504 Offence to give false information

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.

S. 504
amended by
Nos 52/1998
s. 240(b),
67/2010 s. 159,
45/2018 s. 333.

Penalty: 150 penalty units in the case of a natural person;
750 penalty units in the case of a body corporate.

505 Certain penalties prohibited

- (1) A person must not demand or accept from a renter under a residential rental agreement who has failed to comply with the residential rental agreement or with any of the provisions of this Act relating to the residential rental agreement the payment by reason of the failure of any amount other than—

S. 505(1)
amended by
Nos 67/2010
s. 160, 45/2018
s. 334(1)(3).

- (a) subject to this Act, rent under the residential rental agreement; or

S. 505(1)(a)
amended by
No. 45/2018
s. 334(1)(b).

- (b) an amount or penalty provided for in this Act.

Penalty: 150 penalty units in the case of a natural person;
750 penalty units in the case of a body corporate.

S. 505(2)
amended by
Nos 67/2010
s. 160, 45/2018
s. 334(2)(3).

- (2) A rooming house operator 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: 150 penalty units in the case of a natural person;
750 penalty units in the case of a body corporate.

S. 505(3)
inserted by
No. 45/2002
s. 58,
amended by
Nos 67/2010
s. 160, 45/2018
s. 334(3).

- (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: 150 penalty units in the case of a natural person;
750 penalty units in the case of a body corporate.

S. 505(4)
inserted by
No. 67/2010
s. 70,
amended by
No. 45/2018
s. 334(3).

- (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—

- (a) subject to this Act, rent under the site agreement; or

(b) an amount or penalty provided for in this Act.

Penalty: 150 penalty units in the case of a natural person;

750 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.

S. 505A(1)
amended by
No. 45/2018
s. 335(2).

Penalty: 600 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 residential rental agreement in respect of a rented premises, or a room, that is, or is in, the residential premises.

S. 505A(2)
amended by
No. 45/2018
s. 335.

Penalty: 600 penalty units.

505B Offence not to display notice about affiliation of premises with school or institution

S. 505B
inserted by
No. 19/2009
s. 20,
amended by
No. 45/2018
s. 336(2).

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—

S. 505B(b)
amended by
No. 45/2018
s. 336(1).

- (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 residential rental agreement or room in respect of the residential premises because of the formal affiliation of the residential premises with the school or institution.

Penalty: 25 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

S. 506(1)(da)
inserted by
No. 23/2016
s. 24(1).

- (da) by electronic communication in accordance with the **Electronic Transactions (Victoria) Act 2000**; or

- (e) in the manner ordered by the Tribunal.

S. 506(2)
amended by
No. 45/2018
s. 337(1)(a).

- (2) In the case of a notice or other document to be served on or given to a residential rental provider, in addition to the methods set out in subsection (1), a notice or document may be served or given—

S. 506(2)(a)
amended by
No. 45/2018
s. 337(1)(b).

- (a) by delivering it to the residential rental provider or to that person's agent or to the person who usually collects the rent; or

- (b) by sending it by post addressed—

S. 506(2)(b)(i)
amended by
No. 45/2018
s. 337(1)(c)(i).

- (i) to the residential rental provider's at that person's address for service of documents; or

S. 506(2)(b)(ii)
amended by
No. 45/2018
s. 337(1)(c)(ii).

- (ii) to the residential rental provider's agent at the agent's usual place of business; or

- (c) by giving it to a person employed in the office of the residential rental provider's agent. S. 506(2)(c) amended by No. 45/2018 s. 337(1)(d).
- (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— S. 506(2A) inserted by No. 67/2010 s. 71(1).
- (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 this Act, other than under Part 12A, must be given— S. 506(3) amended by No. 45/2018 s. 337(1A) (as amended by No. 1/2021 s. 100).
- (a) by delivering it personally to the renter, resident or site tenant; or S. 506(3)(a) amended by Nos 67/2010 s. 71(2)(a), 45/1018 s. 337(2).
- (b) by sending the notice by registered post addressed to the renter, resident or site tenant at the rented premises, room, site or Part 4A site; or S. 506(3)(b) amended by Nos 67/2010 s. 71(2), 45/1018 s. 337(2).

S. 506(3)(ba)
inserted by
No. 23/2016
s. 24(2).

- (ba) by electronic communication in accordance with the **Electronic Transactions (Victoria) Act 2000**; or
- (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
Nos 67/2010
s. 71(3),
45/2018
s. 337(3).

- (4) If, under this Act, a notice or other document is to be served or given to a person who is a renter 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 renter 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),
amended by
No. 45/2018
s. 337(4).

- (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 renter or site tenant excluded from rented premises or Part 4A site under a recognised non-local 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
 - (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.

S. 506(6)
inserted by
No. 53/2016
s. 123,
amended by
No. 45/2018
s. 337(5).

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

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).

- (1) Part 6.4 of the **Australian Consumer Law and Fair Trading Act 2012** (except sections 153 and 154 and Division 6) extends and applies (with any necessary modifications) to this Act (except Part 14) as if—

S. 507A(1)
amended by
No. 45/2018
s. 338(1).

- (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.

S. 507A(2)
amended by
No. 45/2018
s. 338(2).

- (2) Division 4 of Part 6.2 (except section 133), sections 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).
- (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

(b) a person authorised by the Director for the purposes of this section; or

(c) a police officer.

S. 508(1)
amended by
No. 35/2000
s. 50(c),
substituted by
No. 103/2004
s. 64.

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;

S. 508A
inserted by
No. 45/2002
s. 99,
amended by
No. 68/2009
s. 97(Sch.
item 103).

- (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;
- (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 residential rental 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

S. 510(1)(a)
amended by
No. 45/2018
s. 367.

S. 510(1)(c)
amended by
No. 67/2010
s. 72(a).

- (d) a site agreement in respect of a Part 4A site—

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

S. 510A
inserted by
No. 52/1998
s. 241.

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.

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).

* * * *

Ss 510E–510J
inserted by
No. 103/2004
s. 65,
repealed by
No. 32/2006
s. 94(Sch.
item 42(3)).

Division 2B—Public warning statements

Pt 13 Div. 2B
(Heading and
s. 510K)
inserted by
No. 45/2018
s. 339.

510K Public warning statements

S. 510K
inserted by
No. 45/2018
s. 339.

If satisfied it is in the public interest to do so, the Minister or Director may publish a public statement or issue a public warning identifying and giving information about the following—

- (a) premises offered for residential occupation under Part 2;
- (b) a rooming house or a room in a rooming house under Part 3;
- (c) a caravan or caravan park under Part 4;
- (d) a park under Part 4A;
- (e) premises, rooms, caravans or sites (as the case may be) occupied under agreements or residency rights to which Parts 2, 3, 4 and 4A apply;
- (f) persons who have engaged in conduct contrary to this Act.

Pt 13 Div. 2C
(Heading and
ss 510L–
510O)
inserted by
No. 45/2018
s. 339.

Division 2C—Substantiation notices

S. 510L
inserted by
No. 45/2018
s. 339.

510L Director may require claims to be substantiated

- (1) This section applies if a residential rental provider or that person's agent has made a claim or representation in trade or commerce in respect of rented premises prior to entering a residential rental agreement for the premises, unless the residential rental provider or that person's agent—
 - (a) makes the claim or representation as an information provider by publishing it on behalf of another person in the course of carrying on a business of providing information; and
 - (b) does not have a commercial relationship with the other person other than for the purpose of—
 - (i) publishing claims or representations promoting, or apparently intended to promote, the other person's business or other activities; or
 - (ii) the other person supplying insurance to the person.
- (2) The Director may give the residential rental provider or that person's agent who made the claim or representation a written notice requiring the residential rental provider or that person's agent to do either or both of the following, within 21 days after the notice is given to the residential rental provider or that person's agent—

- (a) give information or produce documents or both to the Director that could be capable of substantiating or supporting the claim or representation;
 - (b) give information or produce documents or both to the Director that are of a kind specified in the notice.
- (3) Any kind of information or documents that the Director specifies under subsection (2)(b) must be of a kind that the Director is satisfied is relevant to substantiating or supporting the claim or representation.
- (4) The substantiation notice must—
 - (a) state the name of the person to whom it is to be given; and
 - (b) specify the claim or representation to which it relates; and
 - (c) give notice to the residential rental provider or that person's agent of—
 - (i) the right to extend the period of compliance with the notice; and
 - (ii) the proposed penalty for failing to comply with the notice; and
 - (iii) the proposed penalty for providing false or misleading information in response to the notice.
- (5) The substantiation notice may relate to more than one claim or representation that the person has made.

S. 510M
inserted by
No. 45/2018
s. 339.

510M Extending period for complying with substantiation notice

- (1) At any time within the period of 21 days after a substantiation notice has been given to a person by the Director, the person may apply in writing to the Director for an extension of the period for complying with the substantiation notice.
- (2) The Director, by written notice given to the person, may extend the period within which the person must comply with the substantiation notice.

S. 510N
inserted by
No. 45/2018
s. 339.

510N Compliance with a substantiation notice

- (1) Subject to subsection (2), a person who is given a substantiation notice must comply with the substantiation notice within the compliance period.

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

- (2) A natural person may refuse or fail to give particular information or produce a particular document in compliance with a substantiation notice on the ground that the information or document may—
 - (a) incriminate the person; or
 - (b) expose the person to a penalty.
- (3) In this section, ***compliance period*** means—
 - (a) the period of 21 days specified in the compliance notice; or
 - (b) if an application is made under section 510M, the period of 21 days specified in the compliance notice, in addition to the period up until

the time when the applicant is given notice of the Director's decision on the application; or

- (c) if the period for complying with the notice has been extended under section 510M, the extended period.

510O False or misleading information

S. 510O
inserted by
No. 45/2018
s. 339.

A person must not, in compliance or purported compliance with a substantiation notice—

- (a) knowingly give the Director false or misleading information; or
- (b) produce to the Director a document that contains false or misleading information unless the document is accompanied by a statement made by the person that identifies that the information is false or misleading.

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

300 penalty units, in the case of a body corporate.

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.

Residential Tenancies Act 1997
No. 109 of 1997
Part 13—General

S. 511(1)(ab)
inserted by
No. 45/2018
s. 340(a) (as
amended by
No. 1/2021
s. 101).

(ab) prescribing work to be urgent site repairs;

S. 511(1)(ac)
inserted by
No. 45/2018
s. 340(a) (as
amended by
No. 1/2021
s. 101).

- (ac) prescribing rental minimum standards,
including but not limited to the following—
- (i) the cleanliness and state of repair of
rented premises;
 - (ii) the privacy, security and amenity of
rented premises;
 - (iii) prescribing or requiring compliance
with any other standards prescribed
under any other Act or law in relation
to, or applicable to, the condition of any
residential premises, including energy
and water efficiency standards;
 - (iv) prescribing or requiring compliance
with industry minimum standards;

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;

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.

(c) endorsements by schools or institutions
which provide education and training of
notices required to be displayed under
section 505B;

Residential Tenancies Act 1997
No. 109 of 1997
Part 13—General

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| (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). |
| * * * * * | S. 511(1)(e) repealed by No. 52/1998 s. 242(a)(iii). |
| (f) prescribing a standard form of residential rental agreement for a fixed term not exceeding 5 years; | S. 511(1)(f) amended by Nos 40/2018 s. 12(1), 45/2018 s. 340(b). |
| (faa) prescribing standard form residential rental agreements for residential rental agreements, or classes of residential rental agreements, for a fixed term of more than 5 years, including but not limited to the following— | S. 511(1)(faa) inserted by No. 40/2018 s. 12(2), amended by No. 45/2018 s. 340(c)(i). |
| (i) prescribing terms which may be inconsistent with, or vary the requirements of, Part 2 (other than Division 2 and Division 9 of that Part); | S. 511(1)(faa)(i) amended by No. 45/2018 s. 340(c)(ii). |
| (ii) prescribing, in relation to residential rental agreements for a fixed term of more than 5 years, alternative terms which may be included in the standard form residential rental agreement or other form of residential rental agreement, or classes of residential rental agreement; | S. 511(1)(faa)(ii) amended by No. 45/2018 s. 340(c)(i)(iii). |
| (faab) prescribing prohibited terms for residential rental agreements, or classes of residential rental agreements, for a fixed term of more than 5 years; | S. 511(1)(faab) inserted by No. 40/2018 s. 12(2), amended by No. 45/2018 s. 340(d). |

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No. 109 of 1997
Part 13—General

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| 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; |
| S. 511(1)(fd)
inserted by
No. 67/2010
s. 73. | (fd) the rents, fees and charges that may be imposed under a site agreement; |
| S. 511(1)(fe)
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)(ff)
inserted by
No. 67/2010
s. 73. | (ff) prescribing the matters to be included in Part 4A park rules; |
| | (g) prescribing forms and information to be used for the purposes of this Act; |
| S. 511(1)(ga)
inserted by
No. 56/2012
s. 18. | (ga) prescribing particulars to be included in, and other matters in relation to, the Rooming House Register; |
| S. 511(1)(h)
amended by
No. 67/2010
s. 162. | (h) prescribing penalties not exceeding 20 penalty units for a breach of the regulations; |
| S. 511(1)(ha)
inserted by
No. 38/2018
s. 309 (as
amended by
No. 19/2019
s. 235). | (ha) prescribing a standard form of SDA residency agreement; |

Residential Tenancies Act 1997
No. 109 of 1997
Part 13—General

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| (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. | |
| * * * * | 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; | |
| (ba) apply at all times or specified times; | S. 511(3)(ba) inserted by No. 67/2010 s. 170 (as amended by No. 36/2011 s. 38(3)). |
| (bb) require matters in the regulations to be— | S. 511(3)(bb) inserted by No. 67/2010 s. 170 (as amended by No. 36/2011 s. 38(3)). |
| (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;
- S. 511(3)(bd) inserted by No. 67/2010 s. 170 (as amended by No. 36/2011 s. 38(3)).

(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)(be) 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)(c) amended by No. 52/1998 s. 242(c).

(c) leave any matter or thing to be from time to time determined or approved by the Director or the Authority.

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.

515A Fire safety and emergency management regulations

S. 515A
inserted by
No. 67/2010
s. 85.

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.

- (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.

S. 516(f)
amended by
Nos 23/2016
s. 26(2),
38/2017
s. 91(1).

Division 3—Application of building and planning laws

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.

S. 517
amended by
No. 28/2000
s. 22.

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.

Division 3A—Fire safety and emergency management procedures

Pt 14 Div. 3A
(Heading and
ss 518A–
518F)
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;

S. 518A
inserted by
No. 67/2010
s. 86.

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.

S. 518B
inserted by
No. 67/2010
s. 86.

518B Provision of fire fighting equipment

- (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.

S. 518C
inserted by
No. 67/2010
s. 85.

518C Space around movable dwellings and adjacent structures

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.

518D Emergency management plan and emergency procedures

S. 518D
inserted by
No. 67/2010
s. 86.

- (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.

S. 518E
inserted by
No. 67/2010
s. 86.

518E Public emergency warnings

- (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.

S. 518F
(Heading)
amended by
No. 23/2016
s. 26(3).

518F Council may issue notice

S. 518F
inserted by
No. 67/2010
s. 86.

S. 518F(1)
amended by
No. 23/2016
s. 26(4).

- (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—

(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.

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.

**S. 520
amended by
No. 23/2016
s. 26(5).**

S. 521
amended by
No. 23/2016
s. 26(5).

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.

Division 5—Enforcement

522 Compliance notice

S. 522(1)
amended by
Nos 23/2016
s. 26(5),
38/2017
s. 91(2).

- (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(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

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| (b) failed to comply with an order of the Tribunal. | S. 523(1)(b) substituted by No. 52/1998 s. 242(d). |
| (2) A closure order may direct that until this Act or the regulation or the order of the Tribunal is complied with— | S. 523(2) amended by No. 52/1998 s. 242(e). |
| (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. | |
| (3) A caravan park owner must comply with a closure order. | S. 523(3) amended by No. 67/2010 s. 165. |
| Penalty: 120 penalty units. | |

524 Delegations

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| (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. | |
| (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. | S. 524(2) amended by Nos 23/2016 s. 26(5), 38/2017 s. 91(3). |

525 Authorised persons

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| (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. | S. 525(1) amended by Nos 46/1998 s. 7(Sch. 1), 67/2010 s. 87(1). |
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S. 525(2)
amended by
No. 23/2016
s. 26(5).

- (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(2A)
inserted by
No. 67/2010
s. 87(2).

- (2A) The Chief Officer within the meaning of the **Country Fire Authority Act 1958** may, either generally or in a particular case—
- (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.

S. 525(2B)
inserted by
No. 67/2010
s. 87(2),
amended by
No. 20/2019
s. 186(1)(a).

- (2B) The Fire Rescue Commissioner within the meaning of the **Fire Rescue Victoria Act 1958** may, either generally or in a particular case—
- (a) exercise the powers set out in section 526;

S. 525(2B)(b)
amended by
No. 20/2019
s. 186(1)(b).

- (b) authorise any officer or employee of Fire Rescue Victoria to exercise the powers set out in section 526.

S. 525(3)
amended by
No. 67/2010
s. 87(3).

- (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(4)
amended by
No. 23/2016
s. 26(6).

- (4) A Council must issue an identity card to each person authorised by the Council under this section.

S. 525(4A)
inserted by
No. 67/2010
s. 87(4).

- (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(4B)
inserted by
No. 67/2010
s. 87(4),
amended by
No. 20/2019
s. 186(2).

- (4B) The Fire Rescue Commissioner within the meaning of the **Fire Rescue Victoria Act 1958** must issue an identity card to each person authorised under subsection (2B).

(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
- (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
- (f) if the identity card is issued by the Fire Rescue Commissioner within the meaning of the **Fire Rescue Victoria Act 1958**, be signed by the Fire Rescue Commissioner.

S. 525(5)(d)
amended by
Nos 67/2010
s. 87(5)(a),
23/2016
s. 26(6).

S. 525(5)(e)
inserted by
No. 67/2010
s. 87(5)(b).

S. 525(5)(f)
inserted by
No. 67/2010
s. 87(5)(b),
substituted by
No. 20/2019
s. 186(3).

(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).

S. 526A
inserted by
No. 67/2010
s. 89.

526A Report of inspection

- (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.

- (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.

S. 526A(3)(b)
amended by
No. 23/2016
s. 26(7).

527 Proceedings for offences against this Part or the regulations

- (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.

S. 527(1)
amended by
No. 23/2016
s. 26(7).

Pt 15
(Heading)
substituted by
No. 63/2005
s. 30.

Part 15—Transitional provisions

S. 528
substituted by
No. 63/2005
s. 31.

528 Definition of 2005 Act

In this Part *2005 Act* means the **Residential Tenancies (Further Amendment) Act 2005**.

S. 529
substituted by
No. 63/2005
s. 31.

529 Number of occupants of room frozen at Royal Assent

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.

S. 530
substituted by
No. 63/2005
s. 31.

530 Rights of existing residents

- (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.

531 Notice to existing residents

**S. 531
substituted by
No. 63/2005
s. 31.**

- (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.

**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.

S. 533
repealed by
No. 103/2004
s. 66,
new s. 533
inserted by
No. 47/2019
s. 49.

Residential Tenancies Act 1997
No. 109 of 1997

Pt 16
(Headings
and ss
534–615)
inserted by
No. 11/2020
s. 46,
amended by
No. 25/2020
s. 10,
repealed by
No. 109/1997
s. 615.³

* * * *

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).

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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.

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Sch. 1 cl. 20
inserted by
No. 45/2018
s. 368,
repealed by
No. 109/1997
Sch. 1
cl. 20(4).

Residential Tenancies Act 1997
No. 109 of 1997
Schedule 1A—Pecuniary penalty provisions

Schedule 1A—Pecuniary penalty provisions

Section 498AD

Sch. 1A
inserted by
No. 45/2018
s. 322.

Part 1

<i>Item</i>	<i>Pecuniary penalty provision</i>	<i>Item</i>	<i>Pecuniary penalty provision</i>
1	Section 26(2)	17	Section 41
2	Section 26(2A)	18	Section 42(3)
3	Section 26A(1)	19	Section 42(4)
4	Section 27A(2)	20	Section 43(1)
5	Section 29(1)	21	Section 43(2)
6	Section 29(2)	22	Section 43(2A)
7	Section 30(1)	23	Section 49
8	Section 30E(3)	24	Section 50
9	Section 30F(1)	25	Section 51(1)
10	Section 30F(3)	26	Section 51(2)
11	Section 30G(2)	27	Section 51(3)
12	Section 31(1)	28	Section 56(1)
13	Section 34(1)	29	Section 65(1)
14	Section 35(1)	30	Section 65A(1)
15	Section 37(1)	31	Section 66(1)
16	Section 40(1)	32	Section 84(1)
33	Section 91A	62	Section 160
34	Section 92C(1)	63	Section 166(1)
35	Section 94B(1)	64	Section 182
36	Section 96	65	Section 183(1)
37	Section 97(1)	66	Section 183(2)
38	Section 99	67	Section 186(1)
39	Section 99A(1)	68	Section 198(1)
40	Section 99A(2)	69	Section 206A
41	Section 100(1)	70	Section 206AM(1)

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Schedule 1A—Pecuniary penalty provisions

<i>Item</i>	<i>Pecuniary penalty provision</i>	<i>Item</i>	<i>Pecuniary penalty provision</i>
42	Section 100(2)	71	Section 206AM(2)
43	Section 100(2A)	72	Section 206E(2)
44	Section 107	73	Section 206I(1)
45	Section 124(2)	74	Section 206JG(1)
46	Section 127(1)	75	Section 206K(1)
47	Section 142A	76	Section 206N
48	Section 142D	77	Section 206O(1)
49	Section 142X(1)	78	Section 206Q(1)
50	Section 145	79	Section 206T
51	Section 145F(1)	80	Section 206TA(1)
52	Section 146(3)	81	Section 206TA(2)
53	Section 147	82	Section 206U(1)
54	Section 148(1)	83	Section 206U(2)
55	Section 150(1)	84	Section 206U(3)
56	Section 150(2)	85	Section 206ZC
57	Section 150A(1)	86	Section 206ZH(1)
58	Section 150A(2)	87	Section 206ZR(1)
59	Section 151(1)	88	Section 206ZR(2)
60	Section 151(2)	89	Section 206ZS(1)
61	Section 151(2A)	90	Section 206ZZ(1)
91	Section 206ZZ(2)	104	Section 424(3)
92	Section 206ZZC(1)	105	Section 425(1)
93	Section 206ZZG(1)	106	Section 428
94	Section 206ZZG(2)	107	Section 439C(2)
95	Section 206ZZH(2)	108	Section 439D(2)
96	Section 206ZZH(3)	109	Section 439F(1)
97	Section 206ZZP	110	Section 439F(2)
98	Section 405(1)	111	Section 439F(3)
99	Section 405(4)	112	Section 439G(3)

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Schedule 1A—Pecuniary penalty provisions

<i>Item</i>	<i>Pecuniary penalty provision</i>	<i>Item</i>	<i>Pecuniary penalty provision</i>
100	Section 406	113	Section 439I(1)
101	Section 411(5)	114	Section 439I(2)
102	Section 420C(3)	115	Section 499(2)
103	Section 424(1)		

Part 2

<i>Item</i>	<i>Pecuniary penalty provision</i>	<i>Item</i>	<i>Pecuniary penalty provision</i>
1	Section 65(1)	13	Section 206AF
2	Section 91P(1)	14	Section 206AZC(1)
3	Section 91P(2)	15	Section 206AZC(2)
4	Section 91ZZH(1)	16	Section 206ZZH(4)
5	Section 142B(1)	17	Section 207J(1)
6	Section 142B(2)	18	Section 207J(2)
7	Section 142B(3)	19	Section 207J(3)
8	Section 142BA	20	Section 207J(4)
9	Section 142R(1)	21	Section 207ZE(2)
10	Section 142R(2)	22	Section 382(2)
11	Section 142ZL(1)	23	Section 392(3)
12	Section 198(2)	24	Section 439G(2)
25	Section 439H(2)	30	Section 505(3)
26	Section 439K(1)	31	Section 505(4)
27	Section 501	32	Section 505A(1)
28	Section 505(1)	33	Section 505A(2)
29	Section 505(2)		

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**.

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Sch. 2 cl. 2
repealed by
No. 109/1997
Sch. 2 cl. 2(4).

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).

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2 Table of Amendments

This publication incorporates amendments made to the **Residential Tenancies Act 1997** by Acts and subordinate instruments.

Residential Tenancies Act 1997, No. 109/1997 (as amended by No. 25/2020)

<i>Assent Date:</i>	23.12.97
<i>Commencement Date:</i>	S. 615 inserted on 25.4.20 by No. 11/2020 s. 46: s. 2; Sch. 1 cl. 20(4) inserted on 19.6.19 by No. 45/2018 s. 368: Special Gazette (No. 228) 12.6.19 p. 1; Sch. 2 cl. 2(4) inserted on 1.7.19 by No. 38/2018 s. 310: Special Gazette (No. 254) 25.6.19 p. 1
<i>Note:</i>	S. 615 repealed Pt 16 (ss 534–616) on 28.3.21; Sch. 1 cl. 20(4) repealed Sch. 1 cl. 20 on 19.6.21; Sch. 2 cl. 2(4) repealed Sch. 2 cl. 2 on 1.7.21
<i>Current State:</i>	This information relates only to the provision/s amending the Residential Tenancies Act 1997

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

<i>Assent Date:</i>	26.5.98
<i>Commencement Date:</i>	S. 7(Sch. 1) on 1.7.98: s. 2(2)
<i>Current State:</i>	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

<i>Assent Date:</i>	2.6.98
<i>Commencement Date:</i>	Ss 234–242 on 1.7.98: Government Gazette 18.6.98 p. 1512
<i>Current State:</i>	This information relates only to the provision/s amending the Residential Tenancies Act 1997

Licensing and Tribunal (Amendment) Act 1998, No. 101/1998

<i>Assent Date:</i>	1.12.98
<i>Commencement Date:</i>	S. 32 on 1.2.99: Government Gazette 24.12.98 p. 3204
<i>Current State:</i>	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

<i>Assent Date:</i>	18.5.99
<i>Commencement Date:</i>	Ss 41, 42 on 1.9.99: Government Gazette 19.8.99 p. 1901
<i>Current State:</i>	This information relates only to the provision/s amending the Residential Tenancies Act 1997

Planning and Environment (Amendment) Act 2000, No. 28/2000

<i>Assent Date:</i>	30.5.00
<i>Commencement Date:</i>	S. 22 on 31.5.00: s. 2(1)
<i>Current State:</i>	This information relates only to the provision/s amending the Residential Tenancies Act 1997

Residential Tenancies Act 1997
No. 109 of 1997
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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**

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

Residential Tenancies Act 1997
No. 109 of 1997
Endnotes

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**

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**

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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**

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**

Residential Tenancies Act 1997
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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**

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**

Residential Tenancies Act 1997
No. 109 of 1997
Endnotes

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**

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**

Residential Tenancies Act 1997
No. 109 of 1997
Endnotes

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**

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**

Residential Tenancies Act 1997
No. 109 of 1997
Endnotes

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**

Residential Tenancies Amendment Act 2018, No. 45/2018 (as amended by Nos 19/2019, 47/2019, 11/2020, 25/2020, 32/2020, 1/2021)

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; ss 4–5(3)(d), 5(3)(f)–(5), 6–34(5)(b), 35–53(3), 53(5)–122, 125–234, 236–322, 329–342(12), 342(15)–367, 380–386, Sch. 1 on 29.3.21: Special Gazette (No. 42) 27.1.21 p. 1; s. 5(3)(e) never proclaimed, repealed by No. 19/2019 s. 237(2); ss 387, 388 never proclaimed, repealed by No. 19/2019 s. 239; s. 342(13)(14) never proclaimed, repealed by No. 47/2019 s. 87
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. 19/2019⁴

Assent Date: 25.6.19
Commencement Date: Ss 147–212, 214 on 2.7.19: Special Gazette (No. 254) 25.6.19 p. 1; ss 213, 215–217 on 1.7.20: s. 2(4)
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Firefighters' Presumptive Rights Compensation and Fire Services Legislation Amendment (Reform) Act 2019, No. 20/2019

Assent Date: 2.7.19
Commencement Date: S. 186 on 1.7.20: Special Gazette (No. 328) 30.6.20 p. 1
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Residential Tenancies Act 1997
No. 109 of 1997
Endnotes

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; ss 55–60 on 31.8.20: s. 2(3)
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Local Government Act 2020, No. 9/2020

Assent Date: 24.3.20
Commencement Date: S. 390(Sch. 1 item 86) on 6.4.20: Special Gazette (No. 150) 24.3.20 p. 1
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

COVID-19 Omnibus (Emergency Measures) Act 2020, No. 11/2020

Assent Date: 24.4.20
Commencement Date: Ss 46–49 on 25.4.20: s. 2
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

COVID-19 Commercial and Residential Tenancies Legislation Amendment (Extension) Act 2020, No. 25/2020

Assent Date: 22.9.20
Commencement Date: S. 10 on 23.9.20: s. 2(1)
Current State: This information relates only to the provision/s amending the **Residential Tenancies Act 1997**

Consumer and Other Acts Miscellaneous Amendments Act 2021, No. 1/2021

Assent Date: 9.2.21
Commencement Date: Ss 83–85 on 10.3.21: Special Gazette (No. 110) 10.3.21 p. 1; s. 82 on 29.3.21: Special Gazette (No. 110) 10.3.21 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

¹ S. 6 (*repealed*): The amendments proposed by section 342(3)–(5) of the **Residential Tenancies Amendment Act 2018**, No. 45/2018 (as amended by Nos 19/2019, 47/2019, 11/2020, 25/2020, 32/2020, 1/2021) are not included in this publication due to the earlier repeal of section 6 by section 5 of the **Residential Tenancies Amendment (Long-term Tenancy Agreements) Act 2018**, No. 40/2018.

Section 342(3)–(5) reads as follows:

342 Further consequential amendments of Division 2 of Part 1

- (3) **Insert** the following heading to section 6 of the Principal Act—
"Residential rental agreements exceeding 5 years".
- (4) In section 6(1) of the Principal Act—
 - (a) for "tenancy agreement" (where twice occurring) **substitute** "residential rental agreement";
 - (b) in paragraph (b)—
 - (i) for "landlord" **substitute** "residential rental provider";
 - (ii) for "tenant" **substitute** "renter".
- (5) In section 6(2) of the Principal Act—
 - (a) for "tenancy agreement" (wherever occurring) **substitute** "residential rental agreement";
 - (b) in paragraph (a), for "tenant" **substitute** "renter".

² Note to s. 26: The amendment proposed by section 384 of the **Residential Tenancies Amendment Act 2018**, No. 45/2018 (as amended by Nos 19/2019, 47/2019, 11/2020, 25/2020, 32/2020, 1/2021) is not included in this publication due to the earlier substitution of the note to section 26 by section 11(8) of that Act.

Section 384 reads as follows:

384 Tenancy agreements to be in standard form

In the note at the foot of section 26 of the Principal Act, for "landlord" **substitute** "residential rental provider".

³ Pt 16 (Heading and ss 535–615) (*repealed*): The amendment proposed by section 86 of the **Consumer and Other Acts Miscellaneous Amendments Act 2021**, No. 1/2021 is not included in this publication due to the earlier repeal of Part 16 by section 615 of the Principal Act.

Section 86 read as as follows:

86 Repeal of Part

In section 615 of the **Residential Tenancies Act 1997**, for "the day that is 6 months after its commencement" **substitute** "26 September 2020".

⁴ Table of Amendments (**Disability (National Disability Insurance Scheme Transition) Amendment Act 2019**): The amendments proposed by sections 215 and 216 of the **Disability (National Disability Insurance Scheme Transition) Amendment Act 2019**, No. 19/2019 are not included in this publication because Subdivision 3 of Division 9 of Part 2 and section 91ZB were not part of this Act when sections 215 and 216 came into operation.

Sections 215 and 216 read as follows:

215 New Subdivision 3A inserted in Division 9 of Part 2

After Subdivision 3 of Division 9 of Part 2 of the
Residential Tenancies Act 1997 insert—

**"Subdivision 3A—Termination of
residential rental agreement because of
coercion or deception of SDA resident**

**91YA Application for termination of residential
rental agreement because of coercion or
deception of SDA resident**

- (1) An SDA resident who is a party to a residential rental 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 residential rental agreement;
 - (b) an order—
 - (i) terminating the existing residential rental agreement; and
 - (ii) requiring the SDA provider who is a residential rental provider to enter a new residential rental agreement with the person who is an SDA resident and other persons (if any) specified in the application;
 - (c) if all the renters under the existing residential rental agreement are SDA residents, an order—
 - (i) terminating the residential rental agreement; and

- (ii) requiring the SDA provider who is a residential rental provider to enter into, or establish, an SDA residency agreement with each person who is a renter under the existing residential rental 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 residential rental agreement;
 - (b) the SDA resident did not receive an information statement as required under section 498D before entering into the residential rental 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 residential rental 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 residential rental 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), any other action that could otherwise be taken in respect of the existing residential rental agreement is stayed until the Tribunal determines the application.

91YB Tribunal orders

- (1) On an application under section 91YA(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 residential rental 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 residential rental agreement; or
 - (ii) order the termination of the existing residential rental agreement and that the SDA provider enter into a new residential rental agreement with the SDA resident and other persons (if any) specified in the application; or
 - (iii) if all renters to the agreement are SDA residents, order the termination of the existing residential rental 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 residential rental 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 renters party to the existing residential rental agreement; or
 - (b) adjourn the application to allow the parties to the agreement to enter into a new residential rental 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 residential rental agreement are—
- (i) unable to enter into a new residential rental agreement, direct the parties to enter into a new residential rental 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 renter and regardless of any loss or damage suffered by the SDA provider, the Tribunal may—
- (a) order that any bond paid by the renter under the existing residential rental agreement be paid out by the Authority to the renter and, if there is more than one renter under the existing residential rental agreement, apportion the bond to be paid out by the Authority between the renters; and
 - (b) revoke any compensation orders that have been issued against the renter.
- (5) In determining an application under section 91YA(1), the Tribunal may take into account the Director's guidelines."

216 Reduced period of notice of intention to vacate in certain circumstances

(1) In section 91ZB(1) of the **Residential Tenancies Act 1997**—

(a) in paragraph (f), for "**2010.**" substitute "**2010**; or";

(b) after paragraph (f) **insert**—

"(g) the renter, who is an SDA resident, has been given a notice under section 498DA."

(2) After section 91ZB(3) of the **Residential Tenancies Act 1997** **insert**—

"(3A) A renter to whom subsection (1)(g) applies may give a residential rental provider 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."