

Residential Tenancies Amendment Bill

Government Bill

Explanatory note

General policy statement

Purpose of Bill

The purpose of the Bill is to—

- encourage the development of a rental market that provides stable, quality housing to those who rent their homes;
- enable landlords to manage their properties more effectively;
- clarify and appropriately balance tenant and landlord rights and obligations.

Background

Significant changes in the structure and dynamics of the residential rental market have taken place since the Act came into force. The number of people living in rental housing has increased with a corresponding decline in home ownership rates.

Landlords have also changed. There has been significant growth in the private rental sector as a proportion of the total rental sector, including more private landlords. For many people, rental property has become an important investment and a significant part of saving for retirement. This means private rental housing is having a bigger im-

pact on New Zealand's housing, social and economic outcomes than it did in 1986.

Finally, demographic changes mean there are an increasing proportion of family households and older (sole) people living in private rental housing for longer periods of time—perhaps throughout their lifetime. The family and individual circumstances and therefore the type of rental accommodation required are now more diverse than they were in 1986.

These changes to the residential rental market mean it is time to amend the Act to ensure it provides a good balance between the needs of tenants for a decent home and landlords to manage their properties effectively.

Summary of key provisions in Bill

The key provisions in the Bill—

- extend the protection of the Act (including access to advice, information and dispute resolution services) to more people involved in renting, such as tenants in boarding houses:
- clarify responsibility for outgoings by introducing overarching principles to indicate when landlords or tenants are responsible for charges such as rates or electricity:
- introduce clearer and fairer processes for terminating and renewing tenancies to provide an appropriate balance between flexibility and certainty of tenure:
- encourage landlords and tenants to comply with their obligations under the Act by increasing the value of existing fines and exemplary damages and introducing new sanctions:
- provide for the majority of tenancy disputes to be resolved quickly, fairly and cost effectively—
 - increasing the Tribunal's monetary jurisdiction:
 - increasing the monetary threshold on the automatic right to use legal representation:
 - allowing the Tribunal to order applicants to be compensated for their filing fee if their claim is partially or fully upheld:
- improve the enforceability of Tribunal orders by—

- giving the Tribunal jurisdiction to make an order against a guarantor of a party to a tenancy agreement:
- allowing a party to recover reasonable private debt collection costs associated with enforcing a Tribunal order:
- assisting Tribunal creditors to locate debtors, by facilitating the release of address information held by government agencies to the District Court.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides that the Bill is to be brought into force on a day or days appointed by Order in Council. The reason for this is that the successful implementation of the changes contained in the Bill are dependent on the prior completion of administrative measures, staff training, and steps to inform landlords and tenants.

Clause 3 states that this Bill amends the Residential Tenancies Act 1986 (the **principal Act**).

Clause 4 amends section 2 of the principal Act, which relates to interpretation.

Cross references are made to definitions relating to boarding house tenancies that are contained in *new Part 2A* of the principal Act. The word dispute is given an extended meaning. The Tenancy Tribunal currently has jurisdiction to determine disputes, and a question has arisen whether this includes a power to make declarations and deal with matters that are not necessarily disputes. The new definition is intended to confirm that the Tribunal does have that wider power.

The definitions of chief executive, Minister of Housing, and Ministry of Housing are replaced with generic definitions, which follow current drafting practice and accommodate the change from the Ministry of Housing to the Department of Building and Housing.

The definition of Tenancy Officer is repealed as that position is discontinued.

The definition of member of the landlord's family is replaced to extend its application to owners of premises. In all other respects, the definition remains unchanged.

The definition of service tenancy, which basically covers tenancies linked to employment agreements, is replaced to cover tenancies linked to contracts for services.

The definition of facilities is amended to clarify that facilities are shared with others and that the definition does not apply to boarding house tenancy agreements.

Clause 5 substitutes a *new section 4* in the principal Act. This is a consequential amendment. At present, the section says that the principal Act applies except as otherwise provided in “this Part”, but with the inclusion of *new Part 2A* the exception needs to be expanded.

Clause 6 amends section 5 of the principal Act, which is the section that defines which sorts of residential tenancies are not covered by the Act. The current exclusion of tenancies with a substantial service component is repealed. Further, as certain kinds of boarding house tenancies are now brought under its ambit, the provisions of section 5 that had the effect of excluding those tenancies need to be amended. The current exclusion of premises used principally as a residence by the landlord or the landlord’s family is extended to cover the owner or the owner’s family. Section 5 is also amended to specify with greater precision, the kinds of accommodation for school pupils and tertiary students that are exempted from the Act. School hostels (within the meaning of section 2 of the Education Act 1989) are exempt. Also exempt are premises in which accommodation is provided to students enrolled at tertiary institutions if the requirements of *new section 5B* are complied with. A further exemption is provided for premises that are let so that the tenant can use them to provide social housing.

Clause 7 inserts *new section 5B*, which sets out the requirements to be met by tertiary student accommodation that is exempt from the Act. The premises must be used exclusively to accommodate tertiary students. They must be owned or operated by a tertiary education provider or a person who has a written agreement with the relevant tertiary education providers. Such an agreement must set out the respective rights and obligations of the parties and provide for a dispute resolution process. The services provided to the students must be over and above the services required under the Act. There is also a requirement for house rules that meet specified criteria, which have to be accessible to prospective and current student tenants.

Clause 8 amends section 7 of the principal Act, which exempts fixed-term tenancies of not more than 120 days from certain provisions

of the principal Act. The clause reduces that period of 120 days to 90 days and also provides that the parties may not enter into such short fixed-term tenancies in order to provide a trial period for testing the suitability of the parties. Where this prohibition is breached, the Tribunal may order the extension or renewal of that tenancy on any terms the Tribunal thinks just, as long as uninvolved third parties are not prejudiced by the order.

Clause 9 amends section 13A of the principal Act, which provides for the minimum information that must be set out in tenancy agreements. It adds a further paragraph that requires landlords to disclose whether the premises have had to be cleansed under a statutory order or requirement and to state what steps, if any, have been taken to comply with the order. The clause also repeals section 13A(2) of the principal Act. This is consequential on *clause 10*.

Clause 10 inserts *new section 13AB* into the principal Act, which sets out the requirements for addresses for service, that is addresses at which service of notices and documents will be accepted. A party must give a physical address as the party's address for service. In addition, such addresses may also take the form of Post Office box numbers, email addresses, and facsimile numbers. The clause consequentially repeals sections 15(2) and 16(2), which all provide that a Post Office box number is not a sufficient address for service.

Clause 11 makes a consequential amendment to section 13D of the principal Act to include a cross reference to a new provision in *new Part 2A*.

Clause 12 amends section 16, which requires changes of name or address to be notified. The amendment clarifies that the obligation does not apply to a contact person whose name and contact details are contained in a boarding house tenancy agreement.

Clause 13 inserts *new sections 16A and 16B*. *New section 16A* requires landlords who are absent from New Zealand for longer than 21 days to appoint an agent and to notify the tenant of the agent's name, contact address, and address for service. If a bond is held in respect of the tenancy, the chief executive must be notified of those particulars in the prescribed form. An agent appointed under this section has, vis-à-vis the tenant, all the rights and obligations of the landlord.

New section 16B concerns units under the Unit Titles Act 1972. If such a unit is let, the tenancy agreement must set out the body corporate rules that will affect the tenant. Those rules form part of the tenancy. Any variation of the rules must be promptly notified to the tenant, and varies the tenancy as soon as it is notified.

Clause 14 inserts *new section 18A*, which prohibits landlords from requiring tenants to provide landlords with a security that is not either a bond permitted by the principal Act or a guarantee. It is made clear that the provision of security includes means by which landlords are given access to the accounts of tenants, such as the imprints of credit cards or PIN numbers of credit cards or charge cards. Requiring a tenant to provide security (other than a permitted bond or guarantee) is declared to be an unlawful act and thus enables the Tribunal to award exemplary damages to the tenant.

Clause 15 consequentially amends section 19 of the principal Act, which relates to the landlord's duties on receipt of a bond. The amendment makes it clear that those duties apply also in the case of part-payments on account of a bond. It is further clarified that those duties do not apply in the case of a bond paid by a tenant under a boarding house tenancy, as long as the bond does not exceed 1 week's rent.

Clause 16 repeals section 22 of the principal Act, which relates to the refund of bonds lodged in respect of tenancies, and replaces that section with *new sections 22 to 22E*. The current position is that if the parties agree on an application for a refund, the refund is made in accordance with the application. If a party contests an application, the chief executive refers the matter to the Tenancy Tribunal. If a party does not respond, the chief executive has a discretion whether to make the refund or refer the matter to the Tribunal. *New sections 22 to 22E* modify that position in several respects. First, in cases where the bond is in dispute, it is for the parties, not the chief executive, to take the dispute to the Tenancy Tribunal. If a party applies to the chief executive for a refund of a bond that is in dispute, the chief executive must tell the parties how to apply to the Tenancy Tribunal for determination of their dispute. Secondly, a landlord will not be able to apply to the chief executive if more than 2 months have passed since the termination of the tenancy, but will instead have to apply to the Tenancy Tribunal. Thirdly, if no claim is made within 2 months of the termination of a tenancy or the bond monies are not

uplifted within 2 months after a refund is approved, the chief executive is given a discretion to take steps to refund the bond. This includes advertising the names of the persons who may be entitled to the refund. If attempts at refunding a bond prove unsuccessful, the chief executive may, under *new section 22E*, request the department responsible for administering the Social Security Act 1964 to supply address information to the chief executive for the purpose of refunding the bond. But, before the chief executive makes such a request, he or she must be satisfied that reasonable steps have been taken to locate the person entitled to the bond.

Clause 17 amends section 24 of the principal Act, which relates to rent increases. The section provides that, in the case of fixed-term tenancies, the rent may not be increased otherwise than as permitted by the agreement. The clause substitutes a *new subsection (1)(g)* to clarify that any rent increase for a fixed-term tenancy is subject to both section 24 and the terms of the agreement. Model provisions that may be included in fixed-term tenancy agreements to authorise rent increases are set out for guidance in *new Schedule 1*.

The clause also makes consequential amendments to section 24 to provide for shorter periods for rent increases made in the case of boarding house tenancies.

Clause 18 inserts a *new section 24A*. The new section deals with the case where the parties agree on a reduced rent for a limited time. The new section clarifies that, on the expiry of that time, the parties revert to the original rent and that this does not amount to a rent increase and is accordingly not subject to the requirements of the Act governing rent increases.

Clause 19 amends section 25 of the principal Act, which relates to market rent assessments by the Tenancy Tribunal. The amendment permits a tenant of a unit who is affected by a change in the body corporate rules to apply for such an assessment within 3 months of being notified of the change or otherwise becoming aware of the change.

Clause 20 replaces section 28 of the principal Act with *new sections 28 to 28B*. Existing section 28 authorises the Tribunal to increase rents where landlords have effected substantial improvements to premises or provided more or better facilities or incurred unforeseeable expenses. The *new section 28* allows the parties to agree on rent increases in the case of substantial improvements or the provision of greater or improved services, as well as in the case of vari-

ations of the terms of the tenancy agreement. Each change on which a rent increase is based must be to the tenant's benefit. If the parties cannot agree on an increase, the landlord may apply to the Tribunal for an order increasing the rent. *New sections 28A and 28B* re-enact, without substantive change, provisions contained in existing section 28.

Clause 21 amends section 32 of the principal Act, which prevents provisions in tenancy agreements requiring the payment of damages, penalties, and sums of a similar nature. The amendment makes an exception for provisions that enable the recovery of expenses incurred in recovering overdue debts.

Clause 22 consequentially amends section 33, which prohibits the seizure of the tenant's goods. The amendment is consequential on the *new Part 2A* that provides for boarding house tenancies.

Clause 23 substitutes a *new section 39*, which relates to responsibility for outgoings. Under the new section the landlord is responsible for all outgoings that are incurred whether or not the premises are occupied, such as general rates, insurance, and, where applicable, body corporate levies. The landlord is also responsible for outgoings for common facilities.

The tenant is responsible for outgoings that are exclusively attributable to the tenant's occupation of the premises or the use of the facilities. Examples of the tenant's responsibility include charges for electricity and gas, telephone and Internet, and charges for water based on consumption.

Clause 24 amends section 40 of the principal Act, which relates to the tenant's responsibilities. Section 40(3) authorises a tenancy agreement to stipulate the maximum number of persons that may reside in the premises. The amendment clarifies that the stipulation affects only the people who ordinarily reside in the premises, and not visitors. *New subsection (3A)* creates 4 new types of unlawful acts. These are, first, a tenant's failure, without reasonable excuse, to quit the premises on the termination of the tenancy; secondly, using the premises for an unlawful purpose; thirdly, contravening the obligations imposed by section 40 in circumstances that amount to the harassment of other tenants or neighbours; and, fourthly, contravening a stipulation as to the maximum number of persons who may reside in the premises. The clause also amends section 40(4), which requires the tenant to prove that any damage to the premises was not caused

intentionally or negligently. The amendment clarifies that the presumption does not extend to fair wear and tear.

Clause 25 amends section 42 of the principal Act to restate the common law position that fixtures put up by the tenant and not removed on the expiry of the tenancy become the property of the landlord. However, this does not apply if there is a contrary agreement or arrangement or if anything the landlord has said or done has led the tenant to reasonably believe that he or she is entitled to remove the fixtures. The clause also reenacts a current provision that makes the tenant liable for any damage caused by removing fixtures.

Clause 26 amends section 44 of the principal Act, which relates to assignments and subletting by tenants. The amendment declares that it is an unlawful act for a tenant to assign or sublet the premises in contravention of a prohibition in the tenancy agreement. In the absence of such a provision, the tenant needs the prior written consent of the landlord. The amendment also makes it an unlawful act for a tenant in that position to assign or sublet the premises without that consent.

Clause 27 amends section 45 of the principal Act, which relates to the landlord's responsibilities. The amendment requires a landlord of premises without a reticulated water supply to provide adequate means for the collection and storage of water. It also adds 2 new types of unlawful acts for which landlords are liable; first, failing to comply with the obligations imposed by section 45(1) concerning cleanliness, maintenance, and health and safety, and, secondly, interfering with the supply of services (eg, electricity). The clause also clarifies that the landlord's obligation to compensate a tenant for repairs paid for by the tenant arises not just when the tenant has attempted to notify the landlord of the disrepair but also when the tenant has successfully done so.

Clause 28 amends section 48 of the principal Act, which sets out a landlord's rights to enter the premises. A new paragraph is inserted to make it clear that a landlord may enter premises if that is necessary to enable services to be provided in accordance with the tenancy agreement. The existing section gives the landlord the right to enter the premises so that the premises can be shown to prospective tenants or purchasers or to a registered valuer. The amendment extends those categories of persons to include experts or real estate agents engaged to appraise or sell the premises as well as persons authorised

to inspect the premises under an enactment. The maximum fine for a landlord who uses, or threatens to use, force in entering premises is increased from \$500 to \$2,000.

Clause 29 amends section 50 of the principal Act, which relates to the circumstances in which tenancies are terminated. The amendment clarifies that fixed-term tenancies may be terminated by notice if a mortgagee takes possession of the premises or in the circumstances, involving the destruction of or serious damage to the premises, set out in section 59 and *new section 59A*. It also includes a reference to *new sections 50A* and *66W* regarding terminations following the death of sole tenants.

Clause 30 inserts a *new section 50A*, which provides for the termination of tenancies in cases where the sole tenant dies. In that case, the tenancy terminates on the earliest of the following:

- 21 days after the personal representative of the tenant or a person who is the tenant's next of kin gives the landlord written notice of the death of the tenant:
- 21 days after the landlord gives the personal representative of the tenant or a person who is the tenant's next of kin written notice to vacate the premises that are the subject of the tenancy agreement:
- on a date agreed in writing by the landlord with the personal representative of the tenant or with a person who is the tenant's next of kin:
- on a date determined by the Tribunal on an application made, without notice, by the landlord.

Clause 31 amends section 51 of the principal Act, which relates to the length of the notice required to be given to terminate a tenancy. Generally, the landlord must give 90 days' notice, and the tenant 21 days' notice. There are, however, special cases where the landlord need only give 42 days' notice. These include cases where the landlord requires the premises for occupation by the landlord or a member of the landlord's family and where the landlord has sold the premises and is required to give vacant possession. *Clause 31* amends section 51 in 3 ways. First, a notice that gives the tenant less than 90 days' notice for the termination must set out the reasons for the termination. Secondly, it is made clear that, in order to qualify for the shorter period of 42 days on the ground that the premises are required by the

landlord, the premises must be required by the person who owns the premises or by a member of that person's family. A requirement by a non-owner, such as the landlord's agent, will not qualify. Further, the premises must be required as the principal place of residence by the owner or a member of his or her family. Thirdly, the justification for giving only 42 days' notice on the ground of having to give vacant possession under an agreement for sale and purchase is limited to agreements that have become unconditional.

Clause 32 makes consequential amendments to section 53, which relates to the termination of service tenancies. The amendments are consequential on the amendment in *clause 4* that extended the definition of service tenancy to include a tenancy linked to a contract for services.

Clause 33 inserts a *new section 53A* to provide for a period of notice of 14 days in cases where a tenant, who has been granted a tenancy because of his or her status as a student, ceases to be an eligible tenant.

Clause 34 makes a consequential amendment to section 54(1) of the principal Act to extend the provisions relating to retaliatory notice to boarding house tenancies.

Clause 35 amends section 55 of the principal Act, which, among other things, requires the Tenancy Tribunal to terminate a tenancy if satisfied that the tenant has assaulted specified persons, including the landlord or members of the landlord's family. The amendment adds to those persons the owner of the premises and members of the owner's family. It also requires the tenancy to be terminated if the tenant causes or permits any person to assault, or to threaten to assault, the landlord or the owner or their families.

Clause 36 amends section 56, which relates to the Tenancy Tribunal's power to terminate tenancies. The purpose of the amendment is to clarify that the procedure under that section is also available to landlords who wish to terminate tenancies on the ground that the rent is in arrears.

Clause 37 amends section 58 of the principal Act, which relates to cases where mortgagees become entitled to the possession of the premises and take the place of the landlord for certain purposes. The existing section gives the mortgagee the right to terminate a fixed-term tenancy as if it were a periodic tenancy. The amendment

gives tenants the corresponding right to terminate a fixed-term tenancy as against mortgagees in possession.

Clause 38 amends section 59 of the principal Act, which concerns the right to give notice where premises are destroyed or rendered uninhabitable. The amendment clarifies that the section applies to fixed-term tenancies as well as periodic tenancies.

Clause 39 inserts *new section 59A* which provides for reduced periods of notice or abatement of rent where the destruction of premises or serious damage to the premises rendering them uninhabitable is the fault of either party. In that case, the party who is not at fault may give a shorter period of notice terminating the tenancy (7 days' notice, in the case of the landlord, and 2 days' notice, in the case of the tenant).

Clause 40 inserts *new sections 60A to 60C*. The *new section 60A* automatically converts expired fixed-term tenancies into periodic tenancies on the same terms as the expired tenancy, unless either party gives notice to the contrary within a period starting 90 days before the expiry of the tenancy, and ending 21 days before the expiry. The Tribunal may order that a tenancy continued as a periodic tenancy under this section be terminated at an earlier date. The Tribunal needs to be satisfied that the hardship the applicant would suffer from the effect of the continuation of the tenancy exceeds the hardship the other party will suffer from the early termination. The applicant may be required to compensate the other party for any loss resulting from the early termination.

New section 60B requires the tenant to exercise any right to a renewal or extension of the tenancy by giving written notice to the landlord. The notice must be given not later than the 21st day before the expiry of the tenancy. If a tenant fails to comply with the notice requirement, the Tribunal may nevertheless order a renewal or extension, if satisfied that without the order the tenant would suffer greater hardship than the landlord.

New section 60C clarifies the position regarding rent increases where a tenancy is extended or renewed. The new section makes it clear that the fact that a tenancy is extended or renewed is not a separate justification for a rent increase.

Clause 41 amends section 61, which relates to the abandonment of premises. It declares that a tenant commits an unlawful act if, without

reasonable excuse, he or she abandons the premises when the rent is in arrears.

Clause 42 amends section 62 of the principal Act, which relates to abandoned goods. The amendment clarifies that the Tribunal may, in making an order for the sale of abandoned goods, give the tenant a final opportunity to collect the goods. In that case, the goods may not be sold unless the tenant has had that opportunity. As with other orders made by the Tenancy Tribunal, the order may be made conditional on the performance of a party's obligations.

Clause 43 amends section 63 of the principal Act, which prohibits a landlord from repossessing premises without the consent of the tenant or a possession order of the Tenancy Tribunal. The amendment changes the current penalty for a breach from a maximum 3 months' imprisonment or a maximum fine of \$1,000 to a maximum fine of \$2,000.

Clause 44 makes a technical amendment to section 64 of the principal Act, which relates to possession orders. The existing section requires a possession order to be made within 3 months of the termination of a tenancy. The amendment changes that period to 90 days.

Clause 45 amends section 65 of the principal Act, which relates to the eviction of squatters. The amendment clarifies that the Tenancy Tribunal has jurisdiction to make possession orders even though the premises concerned are not subject to a tenancy agreement.

Clause 46 amends section 66, which relates to the power of the Tenancy Tribunal to reduce the term of fixed-term tenancies. The amendment authorises the Tribunal, on the application of the tenant, to terminate a fixed-term tenancy ahead of time on either of 2 grounds. The first ground is that there has been a rent increase that is substantial, that was not reasonably foreseeable at the conclusion of the agreement, and that will cause serious hardship. The second ground is if a tenant of a unit under the Unit Titles Act 1972 is adversely affected by a change in the body corporate rules.

New Part 2A inserted

Clause 47 inserts a *new Part 2A* relating to boarding house tenancies into the principal Act.

New section 66A provides that the Part sets out special provisions relating to boarding house tenancies, and identifies those provisions

of the principal Act that do not apply. The provisions in this Part are generally in substitution for the provisions of the rest of the Act that do not apply.

New section 66B defines key terms used in the Part. Boarding houses are defined as residential premises containing 1 or more boarding rooms along with facilities for communal use by the tenants, and intended to be occupied by at least 6 tenants. A boarding house tenancy is one that is intended to, or does in fact, last for 28 days or more. Provision has been made for the fact that in some boarding houses tenants may share a boarding room with another tenant, in which case tenants do not get an exclusive right to occupy a boarding room, only sleeping quarters in a room.

New section 66C sets out the requirements of a boarding house tenancy agreement, which are additional to those required of other tenancies under section 13A of the principal Act.

New section 66D is about bonds. Boarding house landlords do not have to lodge bonds with the chief executive, if the bond is for no more than 1 week's rent.

New section 66E allocates responsibility for outgoings incurred in respect of a boarding house. The landlord is responsible for all ongoing outgoings that are incurred whether or not the boarding house is occupied (eg, rates), for common facilities, and for outgoings incurred in respect of rooms occupied by more than 1 tenant. A tenant is responsible for all outgoings that are exclusively attributable to the tenant's occupation of a room that is exclusively occupied by the tenant. Examples are separately metered electricity supplied to the tenant's room or charges for a telephone connected to the tenant's room. The landlord must provide the tenant each week with an itemised account for any services, where payment for the services is not included in the rent.

New section 66F provides that boarding house tenancies, unlike some other residential tenancies, are not assignable by the tenant.

New section 66G sets out the basic entitlement of the tenants to quiet enjoyment of the premises, and reflects section 38 of the principal Act.

New section 66H sets out the landlord's obligations at the start of a tenancy. These include providing the tenant with a copy of the house rules and schedule of services, and providing the room in reasonable

order. This section reflects sections 36, 37, and 45(1)(a) of the principal Act.

New section 66I sets out the landlord's ongoing obligations. These include ensuring that the premises are kept in a reasonable state of cleanliness and repair, and that all statutory requirements relating to buildings, health, and safety are complied with. Failure to comply with those particular obligations is declared to be an unlawful act. Other obligations include ensuring that the tenant has access at all times to his or her room and to toilet and bathroom facilities, as well as access at all reasonable hours to other facilities. This section reflects section 45 of the principal Act.

New section 66J sets out some further obligations of the landlord. The landlord must not interfere with the supply of gas, or telephone services. Every tenant of the boarding house must be told before locks are changed. A failure to comply with these obligations is an unlawful act. Tenants must also be told if the premises are put on the market. This section reflects sections 45(2), 46(2), and 47 of the principal Act.

New section 66K sets out the obligations of the tenant. These include paying the rent on time; ensuring that the tenant's boarding room is occupied principally for residential purposes, and is kept reasonably clean and tidy; observing the house rules; notifying the landlord of damage; and paying for damage caused by the tenant. The section also lists things that a tenant must not do, such as intentionally or carelessly damaging the premises, making alterations to the premises, or interfering with the peace, comfort, or privacy of neighbours. This section reflects sections 40, 42, and 46(2) of the principal Act.

New section 66L sets out when the tenant is liable for damage. This section reflects sections 40(4) and 41 of the principal Act.

New section 66M sets out the tenant's obligations at the end of a tenancy. This section reflects section 40(1)(e) of the principal Act.

New section 66N imposes an obligation to mitigate damage. This section reflects section 49 of the principal Act.

New section 66O is a provision unique to boarding houses. It authorises a landlord to make house rules. House rules may not be inconsistent with the principal Act, or require or purport to permit anything that is or would be illegal.

New section 66P provides that a tenant who objects to a house rule, or to the way a house rule is being applied, may apply to the Tribunal for an order declaring the house rule unlawful, requiring the landlord to apply the house rule in a particular manner, varying the rule, or setting the rule aside. A landlord who breaches the order commits an unlawful act.

New section 66Q states the basic rule that a landlord may enter a boarding house at any time. The landlord may not use the facilities for his or her own domestic purposes unless he or she resides at the boarding house.

New section 66R sets out the circumstances in which a landlord may enter a boarding room. *Subsection (2)* sets out a procedure under which the landlord may enter after giving the tenant 24 hours' written notice.

New section 66S sets out the requirements of the notice of entry, and the purposes for which entry is authorised using the notice procedure. The tenant may be notified orally or in writing.

New section 66T provides that certain kinds of abuse by the landlord of the right of entry, and refusal by a tenant to allow a lawful entry, are unlawful acts. A landlord who uses or threatens to use force to obtain entry commits an offence. If a landlord does not comply with the proper procedures for effecting entry by the notice procedure, the tenant may apply to the Tribunal for an order prohibiting the further exercise of that power.

New section 66U sets out when a landlord may terminate a tenancy. The landlord may terminate a tenancy—

- immediately, if the tenant causes, or threatens to cause, serious damage, or endangers, or threatens to endanger, people or property or causes, or threatens to cause, serious disruption to other residents:
- on 48 hours' notice, if the tenant is more than 7 days in arrears with rent, is using the room for an illegal purpose, or has abandoned the room:
- on 14 days' notice, if reconstruction, repairs, or renovations are required:
- on 28 days' notice, in which case no reason need be given (but note that section 54 of the principal Act, which provides

protection against notice being served as a retaliatory measure, applies to boarding house tenancies).

The section also sets out the formal requirements for a termination notice.

New section 66V provides that a tenant may terminate a tenancy by giving 48 hours' notice, and that the notice need not be in writing.

New section 66W provides that a tenancy terminates on the death of a sole tenant.

New section 66X sets out a procedure for when the landlord thinks the tenancy has been abandoned. The landlord may, on giving 24 hours' notice, enter the room, and must make all reasonable efforts to contact the tenant's contact person (if one has been identified in the tenancy agreement). The landlord may then terminate the tenancy on 48 hours' notice.

New section 66Y sets out the landlord's duties with respect to a tenant's abandoned goods. The landlord must store the tenant's goods for 35 days, during which time the tenant or the contact person may claim the goods, on payment of actual and reasonable storage costs. After 35 days, the landlord must deliver any personal papers to the police, may dispose of goods worth less than \$100, and must apply to the Tribunal for an order about what to do with goods worth more than \$100.

New section 66Z provides for the landlord to apply to the Tribunal for a possession order. The section reflects section 64 of the principal Act.

Clause 48 removes the current bar in section 67 of the principal Act on appointing Tenancy Adjudicators aged 70 years and over. It also makes consequential amendments.

Clause 49 removes the current provision in section 68 of the principal Act requiring Tenancy Adjudicators to retire on attaining the age of 70. It also makes an amendment to section 68 that is consequential on the new definition of Minister.

Clause 50 amends section 71 of the principal Act, which relates to the conduct of the Tenancy Tribunal and the stationing of Tenancy Adjudicators. The section currently requires sittings of the Tenancy Tribunal to be held, at the discretion of the Principal Tenancy Adjudicator, at the places specified in existing Schedule 1 or at other places directed by that officer. Schedule 1 is repealed by *clause 85*. Section

71 is amended to require sittings of the Tenancy Tribunal to be held at the places the chief executive directs.

Clause 51 substitutes a *new section 72* of the principal Act, which relates to Registrars of offices of the Tenancy Tribunal. The substituted section discontinues the requirement that offices of the Tenancy Tribunal must be situated in the places specified in existing Schedule 1, and reflects, in accordance with section 14 of the State Sector Amendment Act 2003, the change from the former Department for Courts to the successor department, which is the Ministry of Justice. The new section also omits a reference to Tenancy Officers because that office is discontinued.

Clause 52 amends section 73 of the principal Act, which relates to the seal of the Tenancy Tribunal. The amendment is consequential on section 14 of the State Sector Amendment Act 2003, which requires references to the former Department for Courts to be read as references to the Ministry of Justice.

Clause 53 repeals section 75 of the principal Act, which sets out the locations for offices of the Tenancy Tribunal and provides for Tenancy Officers.

Clause 54 makes consequential amendments to section 76 that are consequential on the discontinuation of the office of Tenancy Officer and the new definitions of department and Minister.

Clause 55 makes several amendments to section 77 of the principal Act, which relates to the jurisdiction of the Tenancy Tribunal. The jurisdiction of the Tribunal is affected in 4 respects. First, its jurisdiction is made subject to the Limitation Act 1950. Second, its monetary jurisdiction is extended from \$12,000 to \$50,000. Third, it is given jurisdiction to determine disputes between landlords and guarantors. Fourth, it is precluded from determining disputes so far as they concern the provision by the landlord of health and disability services about which complaints may be taken to the Health and Disability Commissioner. The clause also makes consequential amendments to extend the jurisdiction of the Tribunal to deal with boarding house tenancies and the matters provided for in *new Part 2A*.

Clause 56 amends section 78 of the principal Act, which relates to the orders that the Tenancy Tribunal may make. Section 78 is amended to permit an owner of premises that have not been let to apply to the Tenancy Tribunal for an order declaring the status of those premises.

The application may be made without notice. An order made on such an application is binding in any subsequent proceedings, but the Tenancy Tribunal may rescind the order if satisfied that it is wrong or that there has been a change in circumstances.

Clause 57 inserts a *new section 83A* to enable the Tenancy Tribunal to refer disputes about the provision of health or disability services (which it lacks jurisdiction to determine) to the Health and Disability Commissioner, following consultation with that officer.

Clause 58 substitutes *new sections 86 and 87*. Section 86 relates to the particular office of the Tenancy Tribunal where proceedings must be commenced. The current provision requires proceedings to be commenced in the office that is nearest to the premises to which the dispute relates. Under the substituted *section 86*, the appropriate office will be determined by the chief executive. The chief executive must determine the appropriate office by reference to areas for which each office is responsible. These determinations must be published in the *Gazette* and on the Internet. The existing section 87 requires a Tenancy Officer to refer applications to a Tenancy Mediator. The substituted *section 87* permits the chief executive, on whom the functions of the Tenancy Officers will devolve, to refer applications to a Tenancy Mediator unless there is a contrary regulation or direction given by the Principal Tenancy Adjudicator or a party does not want the application mediated.

Clause 59 amends section 88 of the principal Act, which relates to the functions of Tenancy Mediators. The clause makes amendments that are consequential on the discontinuation of the office of Tenancy Officer. Under the existing section, a Tenancy Adjudicator may refer a matter back to a Tenancy Mediator instead of approving an order made by that Tenancy Mediator. Under the amendment made by the clause, the reference will not be back to the original Tenancy Mediator but to the chief executive, who will assign the case to an appropriate Tenancy Mediator.

Clause 60 amends section 90, which requires Tenancy Mediators to observe confidentiality. The amendment increases the maximum fine for improper disclosure from \$500 to \$1,000.

Clause 61 inserts 2 new provisions into the principal Act. *New section 91A* provides that a notice given to a tenant in any one of certain specified ways is deemed to have been properly served, provided the application to which the notice relates was lodged within 2 months

after the end of the tenancy. This is partly to encourage landlords to lodge applications promptly, and partly to overcome the problem of tenants refusing to accept service or not leaving a forwarding address. In that case, the landlord cannot serve the tenant, and therefore his or her application may not be able to be dealt with. Under this new provision, a notice served at the tenant's address for service is deemed to be properly served, which means an application can proceed. However, if the landlord's application is lodged more than 2 months after the termination of the tenancy, the effect of this section is that the landlord will have to actually locate the tenant and serve him or her, and cannot rely, for example, on posting the notice to the address for service.

New section 91B provides that the Tribunal may hear and determine, or dismiss or adjourn, a matter if it is satisfied that all reasonable efforts have been made to serve a respondent, and any failure to serve the respondent is not due to the fault or unreasonable delay of the applicant. The purpose of this new provision is to allow a proceeding that is effectively halted because the respondent has disappeared to proceed.

Clause 62 amends section 92 of the principal Act. That section currently allows the Tribunal to hear and determine, or dismiss or adjourn, a proceeding even if the parties do not appear, as long as they have been properly served with notice. The amendment confirms that the present provision applies even if neither party appears, but provides that, in that case, the Tribunal may determine the matter only if it is satisfied that it has all the written information it needs to make a proper determination.

Clause 63 amends section 93 of the principal Act, which sets out who may appear before the Tenancy Tribunal. Generally, a party may not be represented by counsel or a representative unless certain exceptions apply. One of these is if the amount in dispute exceeds \$3,000. The clause raises that amount to \$6,000.

Clause 64 amends section 95 of the principal Act, which provides that proceedings before the Tenancy Tribunal are usually to be held in public and enables the Tribunal to order certain hearings to be held in private, and also to make non-publication orders. The amendment enables the Tribunal to make those orders on its own initiative, not just, as at present, on the application of a party.

Clause 65 amends section 99 of the principal Act, which enables the Tenancy Tribunal to refer particular issues of fact to a Tenancy Mediator for a report or to refer particular issues for mediation to such an officer. The amendment allows the Tribunal to appoint persons other than Tenancy Mediators for such references, if the Tribunal is satisfied that the person to be appointed is suitably qualified or experienced.

Clause 66 amends section 102 of the principal Act, which governs awards of costs by the Tenancy Tribunal. The amendment entitles an applicant who has been wholly successful in his or her application to obtain a refund from the respondent of the filing fee paid for the application. If the applicant has been only partly successful, the Tribunal has a discretion to order the respondent to refund the filing fee. The amendment also permits the Tribunal to award costs for any reasonable expenses or commissions incurred in attempting to recover an overdue payment owing under an order of the Tribunal if the tenancy agreement provides for the recovery of those expenses.

Clause 67 amends section 108 of the principal Act, which relates to the enforcement of work orders. *New subsection (2A)* declares the intentional breach of such an order to be an unlawful act.

Clause 68 amends section 109 of the principal Act to increase the amounts that the Tenancy Tribunal may award as exemplary damages for certain unlawful acts and to set new amounts for acts declared to be unlawful acts by other clauses in the Bill. The following table shows the effect of the amendment:

Unlawful acts	Section ref	Proposed (\$)	Current (\$)
Unlawful discrimination	12	4,000	3,000
Landlord failing to appoint agent when outside New Zealand for longer than 3 weeks	16A(5)	1,000	(new)
Requiring key money	17	1,000	750
Landlord requiring bond greater than amount permitted	18	1,000	750
Requiring unauthorised form of security	18A	1,000	(new)
Breach of duties of landlord on receipt of bond	19(2)	1,000	750
Landlord requiring rent more than 2 weeks in advance or before rent already paid expires	23	1,000	750
Landlord requiring rent in excess of market rent order	27(2)	200	150

Unlawful acts	Section ref	Proposed (\$)	Current (\$)
Failure by landlord to give receipts for rent	29	200	150
Landlord seizing or disposing of tenant's goods	33	2,000	1,500
Interference with privacy of tenant	38(3)	2,000	1,500
Failing to quit the premises on termination without reasonable excuse	40(3A)(a)	1,000	(new)
Using or permitting premises to be used for unlawful purpose	40(3A)(b)	1,000	(new)
Harassing other tenants or neighbours	40(3A)(c)	2,000	(new)
Tenant failing to ensure number of residents does not exceed maximum allowed	40(3A)(d)	1,000	(new)
Assigning or subletting a tenancy when prohibited to do so or without the landlord's written consent	44(2A)	1,000	(new)
Landlord's failure to meet obligations in respect of cleanliness, maintenance, or building or health and safety requirements	45(1A)	3,000	(new)
Landlord interfering with supply of services to premises	45(2A)	1,000	(new)
Altering locks without consent of other party	46(3)	1,000	750
Unlawful entry by landlord	48(4)(a)	1,000	750
Abandonment of premises without reasonable excuse	61(5)	1,000	(new)
Harassment of tenant in boarding house	66G(4)	2,000	(new)
Landlord of boarding house failing to meet obligations in respect of cleanliness, maintenance, or building or health and safety requirements	66I(4)	3,000	(new)
Landlord of boarding house interfering with services or failing to advise that premises on the market	66J(4)	1,000	(new)
Tenant of boarding house using or permitting premises to be used for unlawful purposes	66K(4)(a)	1,000	(new)
Tenant of boarding house harassing neighbour	66K(4)(b)	2,000	(new)
Landlord of boarding house failing to comply with order relating to house rules	66P(4)	2,000	(new)
Contraventions relating to entry, or attempted entry, of tenant's room in boarding house	66T(1)	1,000	(new)
Abandonment of premises without reasonable excuse	66X(5)	1,000	(new)
Landlord of boarding house disposing of tenant's goods otherwise than in accordance with section	66Y(6)	2,000	(new)

Unlawful acts	Section ref	Proposed (\$)	Current (\$)
Intentional breach of work order	108(2A)	3,000	(new)
Contracting to contravene or evade the provisions of the Act	137(2)	1,000	750

Clause 68 also provides that a person may be ordered to pay exemplary damages for committing an unlawful act even though the person has been charged, convicted, or acquitted of the offence of breaching an order restraining that act.

Clause 69 inserts *new section 109A*, which enables the Tenancy Tribunal to restrain persons from committing further unlawful acts. The unlawful act must be of the same kind as the act for which the person has been ordered to pay exemplary damages under section 109. Breach of a restraining order is an offence punishable by a maximum fine of \$2,000.

Clause 70 amends section 110 of the principal Act, which makes it an offence to fail to answer a witness summons of the Tenancy Tribunal or fail to give evidence. The maximum fine is increased from \$1,000 to \$2,000.

Clause 71 amends section 112, which makes certain acts committed against the Tenancy Tribunal or its officers punishable as contempt. The maximum fine is increased from \$1,000 to \$2,000.

Clause 72 inserts *new sections 112A to 112F* to establish a procedure to assist parties who have obtained a Tenancy Tribunal order in their favour to enforce that order. *New sections 112A to 112F* provide that judgment creditors may apply to the chief executive of the Department of Building and Housing for contact information about a judgment debtor. The chief executive may then ask specified agencies to search their specified databases for contact information that may assist in the enforcement of the order. That information will be provided to the Secretary for Justice who will forward it to the District Court in which enforcement proceedings may be commenced. The information is only available for the purposes of the enforcement proceedings, and may not be disclosed to the judgment creditor or to any other person.

Clause 73 substitutes a *new section 113*, which requires the chief executive to provide assistance to members of the public. The substitution is consequential on the discontinuation of the office of Tenancy Officer.

Clause 74 amends section 114, which provides for the powers of entry of Tenancy Mediators. The amendment discontinues the current requirement for the production of warrants of appointment when Tenancy Mediators enter premises. Instead, they will be required to produce evidence of identity. The fine for obstructing a Tenancy Mediator is increased from \$1,000 to \$2,000.

Clause 75 consequentially amends section 116 of the principal Act to replace references to Tenancy Mediators Officers with chief executive.

Clause 76 amends section 117 of the principal Act, which relates to appeals to the District Court. The amendment clarifies that a decision by the Tenancy Tribunal to grant, or refuse to grant, an application for a rehearing may be appealed.

Clause 77 amends section 123 of the principal Act, which relates to the functions and powers of the chief executive of the Department of Building and Housing. The amendment adds a new function of supervising the operations of the Tenancy Tribunal in close co-operation with the Registrar so that disputes are dealt with efficiently and expeditiously. That function is currently conferred on Tenancy Officers by section 75, which is repealed by *clause 53*.

Clause 78 makes an amendment to section 126 that is consequential on the new definition of department.

Clause 79 amends section 127 of the principal Act, which relates to the Residential Tenancies Trust Account. The amendment provides that all unclaimed bond money held by the chief executive must be paid to the Crown if it has not been collected 6 years after the termination of the relevant tenancy or 6 years after its refund has been approved. The chief executive currently holds a significant amount of unclaimed bond money and is unable to do anything with it. This clause should be read in the context of *new sections 22D and 22E* of the principal Act, which authorise the chief executive to take steps to refund unclaimed bond money.

Clause 80 amends section 133 of the principal Act, which enables the Tribunal or chief executive to require information about the terms of tenancy agreements. The maximum fine for breaches is increased from \$200 to \$400.

Clause 81 amends section 136, which relates to service of documents. The amendments allow documents to be served by sending them to a

Post Office box or email address if the recipient has agreed to service in that form.

Clause 82 inserts a *new section 136A*, which clarifies when a period, following a notice given under the principal Act, starts and ends. The period starts on the first day following the day on which the notice is given or is deemed to be given, and ends with the last day of the period.

Clause 83 amends section 140 of the principal Act, which enables the Governor-General in Council to make regulations. The amendment enables databases held by the Ministry of Justice, the Ministry of Social Development, and the Department of Building and Housing to be specified as databases that must be searched under *new section 112C*.

Clause 84 repeals section 141, which provides for amendments to Schedule 1, which sets out the locations of the offices of Tenancy Tribunals. The repeal is consequential on the repeal of section 75.

Clause 85 repeals Schedule 1, which sets out the places at which offices of the Tenancy Tribunal must be situated, and substitutes *new Schedules 1 and 1A*, which set out standard clauses for rent increases in fixed-term tenancy agreements and the maximum amounts that may be awarded for unlawful acts.

Part 2

Transitional provisions

Clause 86 states the general proposition that the amendments made by the Bill apply to tenancies in existence before the relevant amendment took effect.

Clause 87 states exceptions to the general proposition stated in *clause 86*. Certain amendments made by the Bill will not apply to existing tenancies.

Clause 88 defers the application of certain new provisions to existing tenancies. The new provision that requires a landlord to have an agent if he or she is out of New Zealand for longer than 21 consecutive days will not apply to existing tenancies until the expiry of 6 months after the provision comes into force. The new provisions that set out the circumstances in which fixed-term tenancies become periodic tenancies are similarly deferred for 12 months.

Clause 89 provides that the *new Part 2A*, other than provisions relating to the content of tenancy agreements, applies to all boarding house tenancies, including pre-existing ones, from the date that the new sections governing boarding houses come into force.

Clause 90 provides that bond refund applications received before the relevant commencement date must be dealt with under the previous provisions.

Clause 91 provides that applications to the Tenancy Tribunal made before the relevant commencement date must be dealt with under the previous provisions. It further provides that the Tenancy Tribunal may not deal with any matter, or make any order, that arises before that commencement date if it could not have dealt with the matter, or made the order, at the time the matter arose.

Clause 92 makes it clear that the provisions in the Bill concerning unlawful acts will not apply to acts or omissions that occur before those provisions come into force. Such acts or omissions must be dealt with in accordance with the principal Act as in force at the time of the act or omission.

Regulatory impact statement

Executive summary

In 2004, Cabinet agreed to review the Residential Tenancies Act 1986 (the **RTA**) with the objective being to improve the effectiveness and efficiency of the RTA in regulating the residential rental market.

The review of the RTA identified 5 key issues:

- insufficient compliance, dispute resolution and enforcement:
- lack of knowledge about landlords' and tenants' rights and obligations:
- mixed capability to manage property and tenants:
- variable standards of rental housing:
- lack of stable tenure for longer term tenants.

The review also identified specific areas where the RTA lacks clarity or is inappropriately balanced, issues associated with the interface between the RTA and other legislation and concerns about a lack of consumer protection for some tenancies that are excluded from the RTA's coverage (eg, boarding house tenancies).

Since the review of the RTA, there have been developments in case law which have left landlords vulnerable to assaults, or threats of assault, from tenants' associates and created uncertainty as to the status of a tenancy when a sole tenant dies.

The specific problems identified by the review, and subsequent analysis of the implications of developments in case law, along with the status quo and the preferred options to address the problems, are detailed in the options section below.

Objective

The public policy objective is to encourage the development of a rental market that provides stable, quality housing to those who rent their homes; enable landlords to manage their residential rental properties effectively; and clarify and appropriately balance tenant and landlord rights and obligations.

Options (regulatory and/or non-regulatory)

This section outlines the—

- problems associated with the RTA:
- status quo if the existing provisions of the RTA were to continue to regulate the residential rental market:
- preferred option for addressing each problem.

The status quo is not the preferred option as it does not address the 5 key issues identified by the review or achieve the public policy objective. Some of the provisions of the RTA lack clarity or flexibility, impede the efficient provision of dispute resolution services, or do not appropriately balance the needs of landlords and tenants. In addition, the status quo is not preferred as it excludes some tenancies which are not adequately covered by other legislation from the RTA's coverage and does not adequately address the interface between the RTA and other legislation that may impact on parties' rights and obligations, such as the Unit Titles Act 1972.

Problems, status quo and preferred options

Payment of outgoings

Problems

The provisions of the RTA are not flexible enough to accommodate the various ways suppliers charge for utilities and services which have been unbundled from the general rates bills. The RTA also lacks clarity with respect to tank water and shared services. Resulting confusion can give rise to disputes and inconsistent Tenancy Tribunal decisions.

Status quo

Landlords are required to pay for all outgoings, except for electricity, gas, telephone charges, and metered water (where the premises have a separate water meter and the tenancy agreement states that the tenant will pay for water charges).

Preferred option

Amend the RTA to—

- introduce overarching principles where—
 - landlords are responsible for charges which would be incurred regardless of whether the premises are occupied and charges for common facilities:
 - tenants are responsible for charges which can be exclusively attributed to their occupation of the premises, or their use of facilities:
- require landlords of premises where the supply of water is not reticulated to ensure that adequate provision (to be determined by an adjudicator) is made for the collection and storage of water.

Termination of tenancies by notice

Problem

Some aspects of the RTA's provisions relating to how and when tenancies can be ended "with notice" lack clarity and/or do not reflect the intent of the provision. As a result, landlords sometimes give in-

valid notices to tenants, which can cause problems for both parties and lead to disputes.

Status quo

Tenants are required to give at least 21 days' notice to end a periodic tenancy. Landlords must give at least 90 days' notice generally, or at least 42 days' notice where the premises—

- have been sold with vacant possession:
- are required for occupation by the landlord or their family member:
- are required for occupation by an employee of the landlord (subject to a clause being included in the tenancy agreement).

Preferred option

Amend the RTA to—

- clarify that landlords must state a reason if ending a periodic tenancy on less than 90 days' notice:
- replace “occupation by the landlord or their family member” with “where the person who owns the premises requires the premises as the principal place of residence for that person or any member of that person's family”:
- clarify that an agreement for sale and purchase must be unconditional before a landlord can give 42 days' notice to end a periodic tenancy due to the sale:
- clarify that where a party has given notice to end a tenancy and wishes to give another notice that would change the termination date, the first notice must be revoked with the other party's consent.

Expiry of fixed-term tenancies

Problems

The RTA's provisions relating to the expiry of fixed-term tenancies are commonly misunderstood and open to abuse. In particular—

- landlords and tenants often mistakenly believe that fixed-term tenancies “roll over” to periodic upon expiry of the fixed term, and fail to renew the tenancy on the basis of that mistaken

belief. This can leave a tenant with no security of tenure, and a landlord with no certainty over rental income:

- landlords sometimes grant rights of renewal without understanding the implications of such a right, and without stipulating how the right is to be exercised and whether the rent may be increased upon renewal:
- some landlords use fixed-term tenancies of short duration (eg, one month) as trial periods that enable landlords to evict tenants on little or no notice for grounds that are not justified under the RTA (eg, requesting repairs).

Status quo

A fixed-term tenancy simply ends upon expiry unless the parties agree otherwise or the tenant exercises a right of renewal. If no new agreement is reached, but the landlord permits the tenant to remain in the premises for more than 90 days after expiry, the tenancy automatically becomes periodic and the standard notice periods are required to end the tenancy. However, within the 90-day “limbo” period, the landlord can require possession and the tenant can return possession at any time without notice.

Preferred option

Amend the RTA to—

- provide for fixed-term tenancies of more than 90 days’ duration to automatically become periodic upon expiry, unless—
 - the parties enter into a new agreement; or
 - one of the parties informs the other in writing of their intention not to enter into another tenancy, at least 21 days prior to the expiry of the term:
- prescribe how rights of renewal work. Tenants will be required to renew the tenancy in writing at least 21 days prior to the expiry of the term, and landlords will be able to increase the rent in accordance with the terms of the agreement:
- provide the Tenancy Tribunal with the ability to grant relief from—
 - a landlord’s refusal to renew a tenancy where the tenant has failed to correctly exercise a right of renewal; or

- the conversion of a fixed-term tenancy to periodic where a party has failed to correctly inform the other party of their intention not to renew the tenancy:
- prohibit the use of fixed-term tenancies of 90 days or less as trial periods (this doesn't prohibit the use of fixed-term tenancies of 90 days or less for other purposes):
- reduce the maximum timeframe for 'short fixed-term tenancies' (which are exempt from some of the RTA's provisions) from 120 days to 90 days for consistency with the above proposals.

Termination in special circumstances

Problems

As the definition of a service tenancy only applies to employees and not to self-employed contractors, landlords who hire and provide housing to self-employed contractors cannot give short notice to end the tenancy. This means the landlord must give standard notice, even where the contract with the contractor has ended and the premises are required to house a replacement worker.

Because a mortgagee may become entitled to terminate a fixed-term tenancy with notice but the same right is not afforded to the tenant, the tenant may lose their security of tenure but still be bound to the fixed term themselves.

Where premises become uninhabitable due to a breach by one of the parties, the other party must use the generic provisions of the RTA to end the tenancy if they cannot reach an agreement between all parties. This will involve giving the standard notice period applicable, or applying to the Tenancy Tribunal for a termination order, and will take much longer than if the premises had become uninhabitable through no fault of either party. A tenant who is not at fault may have to continue paying rent until the tenancy ends and seek that rent back by way of compensation.

The District Court has issued conflicting decisions regarding the status of a tenancy when a sole tenant dies. This has led to confusion as to when, and how, a tenancy is terminated following a tenant's death.

The RTA lacks effective mechanisms for dealing with intimidation by tenants' associates. This has led to landlords and neighbours fearing for their safety.

Status quo

A service tenancy is one which arises from a contract of service between a landlord as employer and a tenant as employee. Parties to service tenancies can give reduced notice to end the tenancy if notice has been given to end the contract of service.

Where a mortgagee becomes entitled to possession of premises which are the subject of a fixed-term tenancy, they are entitled to give notice to end the tenancy as though it were periodic (unless they agreed to the creation of the fixed-term tenancy or are bound by it). The tenant remains bound to the fixed-term tenancy.

The RTA allows either party to terminate a tenancy on short notice where the premises become uninhabitable through no fault of either party, and provides for the rent to cease to become payable in such circumstances. However, where the premises become uninhabitable due to a breach by one of the parties, the party who is not at fault must use the generic provisions of the RTA to terminate the tenancy. With the exception of service tenancies, the RTA is silent on the status of a tenancy when a sole tenant dies.

The Tenancy Tribunal must terminate a tenancy under section 55 of the RTA if a tenant has assaulted, or threatened to assault, specified persons, including their landlord or neighbour. The District Court has ruled the Tenancy Tribunal is unable to terminate a tenancy under section 55 of the RTA where a tenant's guest has committed, or threatened to commit, an assault.

Preferred option

Amend the RTA to—

- extend the definition of service tenancy to cover tenancies granted to both employees and self-employed contractors;
- allow a tenant to give notice to end a fixed-term tenancy as if it were periodic, where a mortgagee has become entitled to terminate the fixed-term tenancy by notice;
- allow a party to give short notice to end a tenancy where the premises are destroyed or so seriously damaged as to be unin-

habitable due to a breach of the agreement by the other party, and where the party in breach is the landlord, allow the tenant to stop paying rent:

- provide for a general tenancy to terminate following the death of a sole tenant on the earliest of the following dates:
 - 21 days after the landlord has been given notice by the legal personal representative or next of kin of the tenant; or
 - 21 days after the landlord has given notice to the legal personal representative or next of kin of the tenant; or
 - a date agreed in writing between the landlord and the legal personal representative or next of kin of the tenant; or
 - a date determined by the Tenancy Tribunal:
- provide for a boarding house tenancy to terminate forthwith upon the death of the tenant:
- require the Tenancy Tribunal to terminate a tenancy where a tenant has caused or permitted someone to assault, or threaten to assault, specified persons, including the tenant's landlord or neighbour.

Security for tenants' obligations

Problems

To hold a guarantor liable for a tenant's obligations, a landlord must generally apply to the Disputes Tribunal (as the Tenancy Tribunal can only hear disputes between landlords and tenants). This may involve increased costs and delays (compared to the Tenancy Tribunal), and often Disputes Tribunal referees lack specialist knowledge of the RTA.

Some landlords have taken credit card imprints as security for the tenancy instead of, or in addition to, a bond. Some of these landlords have charged a purchase to the tenant's credit card without consent.

Status quo

Some landlords obtain a guarantor for a tenancy. However, the Tenancy Tribunal cannot make an order against a guarantor.

Preferred option

Amend the RTA to—

- allow the Tenancy Tribunal to make an order against a guarantor, where appropriate:
- prohibit landlords from requiring forms of security not authorised by the RTA.

Rent increases*Problems*

The RTA lacks clarity with respect to rent increases, in particular—

- whether rent can be increased by agreement without notice:
- what wording is required in a tenancy agreement to allow rent to be increased during a fixed term, and what options a tenant may have if this happens.

Status quo

Landlords are required to give at least 60 days' notice of a rent increase. The rent increase cannot take effect within 180 days of the start of the tenancy or a previous rent increase. Landlords cannot increase rent during a fixed-term tenancy “otherwise than as permitted by the agreement”.

Preferred option

Amend the RTA to—

- allow rent to be increased by mutual consent in consideration of a variation to the terms of a tenancy agreement, or a substantial improvement to premises or facilities:
- clarify the wording that needs to be in a tenancy agreement to enable rent to be increased during a fixed-term tenancy:
- allow a tenant in a fixed-term tenancy to apply to the Tenancy Tribunal for a reduction in the term of the tenancy if they have received notice of a substantial rent increase, the amount of the rent increase was unforeseen, and the increase will cause severe hardship.

Rights of entry

Problem

No right of entry exists for real estate agents to view and appraise premises before marketing them or for prospective purchasers to have premises inspected by a building inspector. This may make it difficult for a landlord to sell their premises.

Status quo

Landlords may enter the premises at any time in an emergency, or with the consent of the tenant or the Tenancy Tribunal. A landlord must give at least 24 hours' notice of entry for necessary repairs or maintenance, or 48 hours' notice of a property inspection. To show the premises to a prospective tenant, purchaser, or a registered valuer, a landlord must obtain the consent of their tenant. This may not be unreasonably withheld, but reasonable conditions may be attached to the consent.

Preferred option

Amend the RTA to provide landlords with a right of entry for the purpose of having the premises appraised by a real estate agent or building inspector, subject to the same conditions as entry by a registered valuer.

Absentee landlords

Problems

Tenants can experience difficulties when landlords attempt to manage their rental properties from overseas. Particular problems include—

- difficulty contacting the landlord to request repairs or give notice;
- delays in repairs, final property inspections and bond refunds as some landlords wish to take care of these themselves when they next return to New Zealand;
- procedural difficulties in conducting mediations and hearings and enforcing orders against overseas landlords, such as ensuring that documents are served on the landlord.

Status quo

There are no provisions in the RTA requiring landlords to be in New Zealand, to appoint a New Zealand-based agent, or to provide a New Zealand address for service of documents.

Preferred option

Amend the RTA to require landlords who intend to be, or are, outside of New Zealand for more than 3 consecutive weeks to—

- appoint a New Zealand-based agent to manage their tenancies during their absence:
- advise the tenant of the agent's appointment:
- advise the Department of Building and Housing (if a bond is being held for the tenancy by the Department).

Monetary thresholds for applications to Tenancy Tribunal*Problems*

The RTA's monetary thresholds have not been amended since the RTA was introduced over 20 years ago. This means more—

- applications meet the \$3,000 threshold for legal representation, which may increase the overall cost of dispute resolution:
- applicants have to choose between waiving part of their claim to bring it within the Tenancy Tribunal's \$12,000 jurisdiction, or facing the increased cost and delay of pursuing their claim through the District Court.

Status quo

The Tenancy Tribunal has jurisdiction to hear claims up to \$12,000 in value. Parties have an automatic right to use legal representation where a claim exceeds \$3,000.

Preferred option

Amend the RTA to increase the—

- Tenancy Tribunal's monetary jurisdiction from \$12,000 to \$50,000:
- monetary limit on the right to use legal representation from \$3,000 to \$6,000.

Clandestine laboratories

Problem

Most domestic supply of methamphetamine is manufactured in clandestine laboratories. In 2006, 50% of clandestine laboratories were located in rental properties. The chemical processes involved in manufacturing methamphetamine may lead to contamination of the premises and pose a danger to future occupiers, especially children.

Status quo

If a territorial authority finds (either by inspection or notification by Police) a clandestine laboratory in its district that is likely to be injurious to health, it has an obligation to take action. This usually involves issuing a cleansing order under the Health Act 1956 specifying work to be carried out and the time in which it is to be completed. Territorial authorities also have an obligation under the Local Government Official Information and Meetings Act 1987 to record any such order on the land information memorandum (the **LIM**) relating to the property. The Tenancy Tribunal has ruled that renting out contaminated premises is a breach of the RTA. The Tribunal stated that in order to meet their obligations under the RTA landlords should have premises professionally decontaminated and subsequently tested to ensure that any remaining level of contamination is within an acceptable range. There is no specific obligation for landlords, however, to inform prospective tenants that premises have been used as a clandestine laboratory or that a cleansing order has been issued.

Preferred option

Amend the Act to require landlords to disclose in a tenancy agreement whether a cleansing order has been issued due to the premises being used as a clandestine laboratory or any other direction from a territorial authority or statutory body has been issued to clean the premises, so that prospective tenants can make informed choices.

Administration of RTA and Tenancy Tribunal procedure

Problems

Some of the RTA's provisions hamper efficient and effective administration of the RTA and the provision of dispute resolution services as—

- tenancy mediators do not always have the expertise to investigate and report on some matters:
- parties may be too intimidated or unaware of their right to request a closed hearing:
- successful applicants cannot claim their filing fee from the other party, even though they are not the party at fault:
- the RTA refers to a Minister who may not always be responsible for the RTA:
- the Department of Building and Housing is unable to access information held by other departments that could be used to facilitate the return of unclaimed or uncollected bond money to tenants and is unable to transfer unclaimed or uncollected bond money to the Crown so it can be used for other purposes.

Status quo

Under the RTA the—

- Tenancy Tribunal can require reports from tenancy mediators:
- Tenancy Tribunal can close hearings or prohibit publication of reports of the proceedings on the request of one of the parties:
- Minister of Housing is referred to as being responsible for administering the RTA:
- provisions of the Public Finance Act 1989 which would ordinarily require the Department of Building and Housing to transfer unclaimed or uncollected bond money to the Crown do not apply.

Preferred option

Amend the RTA to—

- allow the Tenancy Tribunal to appoint any person to investigate and compile a report on any matter of fact having a bearing on proceedings:

- allow the Tenancy Tribunal on its own motion to order that the whole or any part of a hearing be held in private, or to prohibit the publication of any report of proceedings:
- require the Tenancy Tribunal to order the other party to a dispute to compensate the applicant for their filing fee, if the applicant's claim was upheld in full by the Tenancy Tribunal, or partially upheld by the Tenancy Tribunal, and in the opinion of the Tenancy Tribunal it would be reasonable to make such an order:
- amend references to the Minister of Housing to refer to the Minister who is for the time being responsible for the administration of the RTA (or the relevant part):
- enable the Department of Building and Housing to request information from the Ministry of Social Development to facilitate the return of unclaimed or uncollected bond money to tenants:
- require the Department of Building and Housing to pay bond money that remains unclaimed or uncollected for more than 6 years to the Crown.

Clarification issues

Problems

The RTA lacks clarity with respect to—

- the ownership of tenant's fixtures where the tenant does not remove those fixtures prior to the end of the tenancy:
- the validity of notices sent to an email address or post office box:
- when a person is considered to be 'residing' in the premises.

Status quo

The RTA—

- allows tenants to remove their fixtures before the tenancy ends, but is silent on the consequences of failing to remove them:
- does not provide for service of documents to an email address or a post office box:

- allows landlords to include a provision in a tenancy agreement limiting the number of people that may reside in the premises.

Preferred option

Amend the RTA to—

- clarify that ownership of a tenant's fixtures passes to the landlord if the tenant does not remove them before the end of the tenancy, unless the landlord agreed or led the tenant to believe that the tenant could remove the fixtures at a later date:
- allow parties to provide email addresses or post office boxes as an address where the party will accept service of documents relating to the tenancy:
- allow a tenancy agreement to restrict the number of people that may 'ordinarily reside' in the premises.

Retirement Villages Act 2003

Problems

Rights for older people in retirement village rental accommodation are covered in various pieces of legislation and the common law which means that—

- minimum legal rights and obligations are inadequate:
- rights and obligations are not clearly defined:
- information about rights and obligations is not readily accessible:
- support structures are fragmented.

Status quo

Rental accommodation for older people may be exempt from both the Retirement Villages Act 2003 (the **RVA**) and the RTA.

Supported accommodation for older people (ie, rental accommodation provided with support services) is excluded from the RVA because tenants do not pay a "capital sum". It is also excluded from the RTA if the cost or value of the services provided by the landlord forms more than 20% of the rent payable.

The service component of the tenancy may be subject to its own legislation. The Consumer Guarantees Act 1993 requires that services be

fit for purpose, and the premises will be subject to applicable building, health, and safety requirements.

Preferred option

Amend the RTA to—

- repeal the exemption of tenancies where the cost or value of meals or services provided to the tenant forms more than 20% of the rent:
- provide landlords with a right of entry to premises, where entry is necessary to provide services to the tenant that the landlord and tenant have agreed that the landlord will provide.

Unit Titles Act 1972

Problems

Many tenants in multi unit developments are unaware of the existence of body corporate rules until after they have committed to a tenancy, but they are bound by the rules under the Unit Titles Act 1972 (the **UTA**). These rules may impose additional obligations or restrictions on a tenant that are not provided for in the tenancy agreement, or may be inconsistent with a tenant's rights under the provisions of the RTA. Changes to body corporate rules during the tenancy may reduce the tenant's access to common facilities, such as swimming pools or services. This may affect the market rent for the tenancy or the degree to which the tenancy meets the tenant's requirements.

Status quo

The UTA states that body corporate rules apply to any person "in actual occupation of a unit". There is no requirement for tenants to receive a copy of the body corporate rules, or for tenants to be consulted on, or notified of, changes to body corporate rules. Tenants have no specific rights under the RTA or the UTA if body corporate rules change to their detriment.

Preferred option

Amend the RTA to—

- require landlords to include body corporate rules that affect the tenant, if any, in the tenancy agreement:
- require landlords to notify the tenant, in writing, of any variation to the body corporate rules that affects the tenant:
- provide for a variation to the body corporate rules to automatically take effect as a variation to the terms of the tenancy agreement, once the tenant is notified of, or otherwise becomes aware of, the change:
- allow the Tenancy Tribunal to end a fixed-term tenancy early if the body corporate rules materially change and, in the view of the Tenancy Tribunal, it would be unreasonable to require the tenant to continue with the tenancy:
- allow tenants that are party to a fixed-term tenancy agreement to apply to the Tenancy Tribunal for a market rent assessment within 3 months of receiving notification of, or otherwise becoming aware of, a change to body corporate rules, or the effective date of any change, whichever is the latter.

Property Law Act 2007*Problem*

The Property Law Act 2007 removed the ability for parties to contract out of the provisions of the RTA when entering into fixed-term tenancies exceeding 5 years' duration. This has created doubt about the enforceability of some leases entered into between Housing New Zealand Corporation and private landlords under the Home Lease Programme, as these leases contain provisions that are inconsistent (for good reason) with the provisions of the RTA.

Status quo

The RTA applies to every tenancy for residential purposes, unless expressly excluded under section 5 of the RTA. Any purported waiver by a tenant of any right or power conferred on a tenant under the RTA is generally unenforceable.

Tenancies are excluded from the RTA's coverage under section 5 where the tenancy agreement expressly provides that the tenant will not occupy the premises personally, but will sublet the premises, either for commercial gain or to provide accommodation for the tenant's employees. Because Housing New Zealand Corporation usually receives substantially less than market rent when it sublets leased premises to state housing tenants, there is some doubt as to whether this exemption applies to the Home Lease Programme.

Preferred option

Amend the RTA to exclude tenancies where the tenant will not occupy the premises personally, but will sublet the premises to provide social housing. The RTA would still apply to the sub-tenancy.

Boarding houses

Problems

Because there is no consolidated regulatory framework governing boarding house tenancies, the rights and obligations of boarding house tenants are unclear, inadequate, and difficult to enforce. In particular, the quality of boarding house accommodation is variable and boarding house landlords and tenants do not have access to specialist information, advice, and dispute resolution services.

Status quo

Boarding house tenancies are usually excluded from the RTA's coverage, as it does not apply where "the premises constitute part of any hotel, motel, boardinghouse or lodginghouse used for the provision of temporary or transient accommodation".

Most boarding house tenants have few tenancy specific-rights and must rely on common law remedies and some generic provisions of the Consumer Guarantees Act 1993.

Preferred option

Amend the RTA to—

- extend its coverage to boarding house tenancies:

- define a boarding house as premises containing one or more boarding rooms along with facilities for communal use by tenants and occupied, or intended to be occupied, by at least 6 tenants at any one time;
- define a boarding house tenancy as one that is intended to, or does in fact, last for a minimum of 28 days;
- provide for some of the rights and obligations of boarding house tenants to differ from other tenants, because of the different nature of boarding house tenancies, including the—
 - way tenancies are terminated;
 - process for dealing with abandoned goods;
 - ability for landlords to make house rules;
 - requirements for lodging bond money with the Department of Building and Housing.

Costs and benefits of the preferred options

The costs and benefits of the proposals to affected parties are summarised in this section. There is insufficient information to be able to quantify the extent of the costs and benefits arising from the preferred options.

Government

Costs

Cost associated with investigations and reports for the Tenancy Tribunal are likely to increase if experts are used instead of tenancy mediators (cost likely to be small as ability to require investigations and reports is used infrequently).

Possibility of filing fee being awarded to applicant may increase the number of small or frivolous claims (mitigated by Tenancy Tribunal's ability to award costs against applicants who bring frivolous or vexatious claims).

Demand for the Department of Building and Housing tenancy services (bond processing, advice, dispute resolution) will increase due to—

- extending the RTA to cover boarding houses and tenancies with a high service component:

- giving tenants in unit titled properties new grounds to seek a Tenancy Tribunal order:
- new grounds for seeking termination of a tenancy through the Tenancy Tribunal:
- amendments to the RTA causing a transitional increase in demand for advice and dispute resolution.

Demand for accommodation supplements from the Ministry of Social Development may increase due to higher maintenance costs being passed on to tenants through rent increases.

Interest revenue earned on bond money held by the Department of Building and Housing will decrease, as unclaimed or uncollected bond money is paid to the Crown, and unclaimed or uncollected bonds are paid out due to advertising.

Benefits

Improved health (reduced public health costs), educational outcomes, and job stability (as tenant turnover reduces and housing quality improves) due to—

- greater clarity and improved knowledge of rights and obligations reducing the incidence of disputes:
- upgraded housing in response to the introduction of sanctions for landlords who breach the requirement to comply with building requirements and health and safety regulations.

Less dependence on State-funded housing because of the potential for property investment to become more desirable and/or profitable due to improved legislation and a reduction in risk and disputes.

Lower demand for disputes resolution and collection services due to—

- greater certainty over rights and obligations:
- the increased likelihood of the “other party” in a dispute settling without the need for a Tenancy Tribunal application because of the possibility of being ordered to pay the applicant’s filing fee:
- the ability for creditors to recover private debt collection costs associated with enforcing a Tenancy Tribunal order.

Lower cost of providing dispute resolution services due to—

- increased jurisdiction of the Tenancy Tribunal resulting in fewer disputes being heard by the District Court:
- the higher threshold for the use of legal representation resulting in lower demand for legal aid.

Improved perception of fairness in dispute resolution processes due to—

- better quality reports for the Tenancy Tribunal due to the appointment of investigators with appropriate expertise:
- the Tenancy Tribunal's ability to award filing fees to successful applicants.

Improved perception of fairness as—

- the new provisions for boarding house tenancies will be more closely aligned to the standard tenancy provisions:
- tenants in supported housing will no longer have their tenancy rights affected by the services they receive:
- the RTA will enable action to be taken against tenants who encourage or permit their associates to threaten or assault landlords and neighbours.

The Crown will be able to utilise bond money that remains unclaimed or uncollected for more than 6 years.

Landlords/property managers

Costs

Landlords of boarding house tenancies and tenancies with a high service component will incur new compliance costs as a result of becoming subject to the RTA. For example, costs associated with lodging bonds with the Department of Building and Housing, providing tenants with written tenancy agreements and complying with statutory notice provisions.

Some landlords will incur greater costs due to being explicitly prevented from splitting shared outgoing bills between tenants (can be mitigated by increasing rent or investing in meters to measure the supply of water, etc, to individual premises).

Potential loss of income for mortgagees entering into possession of premises which are the subject of a fixed-term tenancy as tenant will be able to give early notice.

Reduced ability to use legal representation, which may adversely affect outcome of proceedings for landlords (mitigated by the Tenancy Tribunal's ability to allow legal representation where necessary, adjudicators' specialist knowledge of the RTA and the more inquisitorial nature of Tenancy Tribunal proceedings).

Some landlords may have to hire a professional property manager when overseas.

Higher maintenance costs as more properties meet current building and health and safety legislative requirements.

Costs for landlords with fixed-term tenancies associated with issuing a written notice about their intent not to enter into another tenancy.

Cost of obtaining a LIM report or inspecting territorial authorities' records to establish whether a cleansing order has previously been issued in relation to the premises.

Landlords of unit titled properties will—

- have reduced certainty over fixed contract terms, as tenants will be able to apply to the Tenancy Tribunal to have the terms changed if the body corporate rules materially change:
- incur compliance costs.

Time to understand new legislation.

Benefits

Reduced risk due to greater—

- clarity about rights and obligations reducing the risk of unknowingly breaching the RTA:
- certainty over the status of expiring fixed-term tenancies:
- oversight of tenancies when overseas.

Less need for dispute resolution and collection services due to—

- greater certainty over rights and obligations:
- the possibility of having to reimburse landlords' filing fees encouraging tenants to settle disputes.

Lower cost dispute resolution due to—

- larger claims and disputes with guarantors being heard by the Tenancy Tribunal:

- greater restrictions on the use of legal representation.

Greater ability to effectively manage investment and business as a landlord can—

- have premises appraised to establish the full market value:
- terminate the tenancy swiftly when a contract for service with a contractor is ending.

Extending the RTA to cover boarding house tenancies and tenancies with a high service component will mean that these landlords will benefit from—

- more clearly defined rights and obligations:
- readily accessible rights and obligations due to a consolidated regulatory framework:
- access to tenancy-specific support structures for advice, information and low-cost timely dispute resolution services.

Landlords' ability to effectively manage their business will improve with the introduction of a new right of entry for the purpose of providing services to the tenant.

More consistent rental cash flow due to—

- improved clarity about legislative requirements and strengthened offences/penalties resulting in fewer disputes:
- improved Tenancy Tribunal efficiency and effectiveness reducing dispute resolution time frames:
- certainty over the status of a tenancy and entitlement to rent when a sole tenant dies:
- improved ability to enforce Tenancy Tribunal orders.

Reduced costs arising from improved compliance, enforcement and dispute resolution processes, eg, travelling to mediation and reduced tenant turnover.

Tenants

Costs

Greater costs for tenants where the landlord is able to shift the responsibility for outgoings to them. This can be mitigated by negotiating lower rent, conserving the use of resources such as water and transitional provisions to stop costs being transferred for existing tenancies.

Potential increase in rent if landlords incur maintenance costs to make properties meet current building and health and safety legislative requirements.

Greater risk for self-employed contractors to be made to vacate on short notice (it is likely that most would vacate upon expiry of contract for service anyway).

Costs for tenants in fixed-term tenancies associated with issuing a written notice about their intent not to enter into another tenancy.

Reduced ability to use legal representation which may adversely affect outcome of proceedings for tenant (mitigated by the Tenancy Tribunal's ability to allow legal representation where necessary, adjudicators' specialist knowledge of the RTA, and the more inquisitorial nature of Tenancy Tribunal proceedings).

Time to understand new legislation.

Benefits

Greater stability and certainty of tenure due to—

- fewer disputes with landlords due to greater certainty over rights and obligations and the requirement for landlords to appoint a New Zealand-based agent when overseas:
- greater emphasis on self-resolution of disputes through the use of notices to remedy:
- prohibiting the use of fixed-term tenancies of 90 days or less as trial periods (this doesn't prohibit the use of fixed-term tenancies of 90 days or less for other purposes):
- greater certainty over the status of expiring fixed-term tenancies:
- the ability to end their fixed-term tenancy and take up a secure tenancy elsewhere when a mortgagee enters into possession of the premises.

Improved public health as substandard housing is upgraded due to the introduction of sanctions for landlords who breach the requirements to comply with building requirements and health and safety regulations.

Tenants will be able to make informed choices about whether they wish to rent premises that have previously been the subject of a cleansing order.

Strengthened social cohesion as reduced tenant turnover means tenants/families are less transient and can stay in the same community, jobs, and schools for longer.

Strengthened ability to uphold and enforce rights due to—

- landlords being prohibited from requiring forms of security not authorised by the RTA:
- landlords being required to appoint a New Zealand-based agent when overseas:
- prohibiting the use of fixed-term tenancies of 90 days or less as trial periods (this doesn't prohibit the use of fixed-term tenancies of 90 days or less for other purposes).

Financial benefits with reduced—

- indirect costs for tenants associated with dispute resolution processes, eg, travelling to mediation:
- tenant turnover resulting in fewer relocation costs, eg, schools, banks, community, jobs, utility connections, and improved education outcomes.

Extending the RTA to cover boarding house tenancies and tenancies with a high service component will mean that these tenants will benefit from—

- improved minimum legal rights:
- more clearly defined rights and obligations:
- readily accessible rights and obligations due to a consolidated regulatory framework:
- access to tenancy-specific support structures for advice, information and low-cost timely dispute resolution services.

Tenants in unit titled developments will—

- be made aware of the body corporate rules and any changes, which will help avoid disputes:
- have greater rights when the body corporate rules materially change.

Tenants will be more likely to become aware of unclaimed or uncollected bond money owing to them as the Department of Building and Housing will be able to advertise unclaimed or uncollected bonds.

Consultation

External stakeholder consultation

A discussion document, *Getting the Balance Right: Review of the Residential Tenancies Act 1986*, was released in November 2004. It sought public feedback on various residential housing issues. During the public consultation period, 15 public meetings, attended by approximately 350 people, took place and 574 written submissions were received (466 of the written submissions (81%) were from private landlords).

An External Reference Group of key external stakeholders was established and members of the group were consulted at key stages during the review, including development of a public discussion document and development of proposals. The External Reference Group consisted of the following: the Retirement Commissioner, New Zealand Building Industry Federation, Reverend Lagi Sipeli, Kiwi Tamasese, Real Estate Institute of New Zealand, Property Investors' Federation, Christchurch Tenants' Protection Association, Local Government New Zealand, Disabled Persons Assembly, Areta Koopu, and the New Zealand Property Institute.

Focused consultation has also taken place with the Independent Property Managers' Association, Manawatu Tenants' Union, Auckland Tenants' Protection Association, Principal Tenancy Adjudicator and Insurance Council of New Zealand.

Government departments/agencies consulted

The following agencies have been consulted about proposals in this paper: Housing New Zealand Corporation, Ministry of Social Development, Ministry of Justice, Ministry of Economic Development, Te Puni Kōkiri, Ministry of Health, New Zealand Police, Department of Internal Affairs, and the Treasury. The Department of the Prime Minister and Cabinet has been informed.

Hon Phil Heatley

Residential Tenancies Amendment Bill

Government Bill

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Boarding house tenancies**

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Residential Tenancies Amendment Act **2009**.
- 2 Commencement**
This Act comes into force on a date to be appointed by the Governor-General by Order in Council; and 1 or more orders may be made bringing different provisions into force on different dates.

- | | | |
|------------------------------------|---|----|
| Part 1 | | |
| Amendments to principal Act | | 10 |
| 3 Principal Act amended | This Act amends the Residential Tenancies Act 1986. | |
| 4 Interpretation | | |
| (1) | Section 2(1) is amended by inserting the following definitions in their appropriate alphabetical order: | 15 |
| | “ assignment means a transfer to a person of all of the rights that a tenant has under a tenancy agreement | |

“**boarding house, boarding house tenancy, boarding house tenancy agreement, and boarding room** each have the meanings given to them in **section 66B**

“**department** means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act 5

“**dispute**, in relation to a matter before, or to be brought before, the Tribunal, includes any claim, difference, question, or other matter, whether it requires a decision as between the parties or a declaration 10

“**guarantor**, in relation to a tenancy, means a person who guarantees the performance of the tenant’s obligations, or who indemnifies the landlord against loss that he or she may incur in respect of the tenancy, or who assumes liability for the performance of the obligations of the tenant, and **guarantee** has a corresponding meaning”. 15

- (2) Section 2(1) is amended by repealing the definitions of **address for service, chief executive, member of the landlord’s family, Minister, Officer of the Tribunal, and service tenancy** and substituting the following definitions in their appropriate alphabetical order: 20

“**address for service** has the meaning given to it by **section 13AB**

“**chief executive** means the chief executive of the department

“**member of the landlord’s or owner’s family** means any of the following: 25

“(a) the landlord’s or owner’s spouse or civil union partner:

“(b) the landlord’s or owner’s de facto partner:

“(c) any child of the landlord or owner or of any person referred to in **paragraph (a) or (b)**: 30

“(d) any other child who is being, or is to be, cared for on a continuous basis by the landlord or owner or any person referred to in **paragraph (a) or (b)**:

“(e) any parent of the landlord or owner or of any person referred to in **paragraph (a) or (b)**: 35

“(f) any other person who is related (whether by blood or marriage) to the landlord or owner or to any person referred to in **paragraph (a) or (b)** and is residing, or is to

reside, in the landlord's or owner's premises in accordance with an arrangement between that person and the landlord or the owner of a predominantly domestic or family nature rather than a predominantly commercial nature

5

“**Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

“**officer of the Tribunal** means an officer of the department or the Ministry of Justice who is for the time being acting in the service of the Tribunal; and includes a Tenancy Mediator

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“**service tenancy** means a tenancy granted under a term of, or otherwise as an incident of, a contract of service or a contract for services between the landlord as employer and the tenant as employee or contractor, whether or not a separate tenancy agreement is concluded in writing between the parties, and whether or not any rent is payable for the tenancy; and includes—

15

“(a) any tenancy of that kind granted under or in accordance with any enactment; and

20

“(b) any tenancy of that kind granted by a company to an employee or contractor of an associated company (within the meaning of subsection (2)); and

“(c) any tenancy granted by the Armed Forces to any person subject to the Armed Forces Discipline Act 1971”.

25

(3) The definitions of **bailiff**, **ethnic or national origins**, **Ministry**, and **Tenancy Officer** in section 2(1) are repealed.

(4) The definition of **facilities** in section 2(1) is amended by omitting “, includes all facilities provided by the landlord for the” and substituting “(other than a boarding house tenancy agreement), includes all facilities provided by the landlord for the non-exclusive”.

30

(5) The definition of **fixed-term tenancy** in section 2(1) is amended by omitting “of this Act” and substituting “and section 58(1)”.

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- (6) The definition of **possession order** in section 2(1) is amended by omitting “or section 65 of this Act”, and substituting “, 65, or **66Z**”.
- (7) The definition of **premises** in section 2(1) is amended by omitting “include” and substituting “includes (other than in relation to a boarding house tenancy, in which case the definition in **section 66B** applies)”.
- 5 New section 4 substituted**
Section 4 is repealed and the following section substituted:
- “4 Act generally to apply to all residential tenancies** 10
This Act applies to every tenancy for residential purposes except as specifically provided.”
- 6 Act excluded in certain cases**
- (1) Section 5 is amended by repealing paragraph (h) and substituting the following paragraph: 15
“(h) where the premises are used to provide accommodation to students—
“(i) at a school hostel (being a hostel within the meaning of section 2 of the Education Act 1989); or
“(ii) in accordance with the requirements of **section 5B**.” 20
- (2) Section 5 is amended by repealing paragraphs (k) and (l) and substituting the following paragraph:
“(k) where the premises are intended to provide temporary or transient accommodation (such as that provided by hotels and motels), being accommodation that is ordinarily for periods of less than 28 days at a time.” 25
- (3) Section 5 is amended by repealing paragraph (n) and substituting the following paragraph:
“(n) where the premises, not being a boarding house, continue to be used, during the tenancy, principally as a place of residence by the landlord or the owner of the premises or by any member of the landlord’s or owner’s family.” 30
- (4) Section 5(s) is amended by inserting “or to provide social housing” after “tenant’s employees”. 35

7 New section 5B inserted

The following section is inserted after section 5A:

“5B Exempt student accommodation

- “(1) For the purposes of **section 5(h)(ii)**, this Act does not apply to premises if— 5
- “(a) the premises are used to provide accommodation exclusively for students of 1 or more tertiary education providers; and
 - “(b) the premises are owned or operated by a person (an **accommodation provider**) who is— 10
 - “(i) a tertiary education provider; or
 - “(ii) a person who has entered into a written agreement of the kind described in **subsection (5)** with each tertiary education provider whose students are accommodated at the premises; and 15
 - “(c) the accommodation provider complies with **subsections (2) to (4)**.
- “(2) The accommodation provider must provide services to the students accommodated in the premises that are over and above the services that a landlord must provide under Part 2 or **2A**. 20
- “(3) The accommodation provider must have in place house rules that aim to create an environment that fosters personal development and encourages a sense of community and association with fellow students.
- “(4) The accommodation provider must take all reasonable steps to ensure that prospective and current student tenants are made aware of, and have access to copies of, the house rules. 25
- “(5) An agreement referred to in **subsection (1)(b)** is one that sets out—
- “(a) the rights and obligations of the accommodation provider and the tertiary education provider; and 30
 - “(b) a dispute resolution process by which disputes between the accommodation provider and the tertiary education provider may be resolved.
- “(6) In this section, **tertiary education provider** has the same meaning as in section 159(1) of the Education Act 1989, and, accordingly, includes universities, polytechnics, colleges of education, wananga, specialist colleges, private training 35

establishments registered under Part 18 of that Act, and government training establishments.”

8 Short fixed-term tenancies

(1) Section 7 is amended by omitting “120” in each place where it appears and substituting in each case “90”. 5

(2) Section 7 is amended by inserting the following subsections after subsection (2):

“(2A) The parties may not enter into a fixed-term tenancy of not more than 90 days for the purpose of using that tenancy as a trial-period for ascertaining the desirability of extending or renewing the tenancy. 10

“(2B) The Tribunal may, on the application of a tenant or former tenant who is or who was a party to a fixed-term tenancy of not more than 90 days, order the extension or renewal of that tenancy on any terms that the Tribunal thinks just if the Tribunal is satisfied that— 15

“(a) the tenancy was granted in breach of **subsection (2A)**; and

“(b) the proposed extension or renewal will not prejudice third parties who are not in any way involved in the breach.” 20

9 Contents of tenancy agreement

(1) Section 13A(1) is amended by inserting the following paragraph after paragraph (n):

“(na) whether an owner or occupier of the premises has been ordered or required under this Act or any other enactment (including, but not restricted to, section 41 or 82 of the Health Act 1956 or section 124(1)(c) of the Building Act 2004) to cleanse the premises and, if that is the case, the nature and date of the order or requirement and the steps, if any, that have been taken to comply with the order or requirement; and” 25 30

(2) Section 13A is amended by repealing subsection (2).

10 New section 13AB inserted

(1) The following section is inserted after section 13A: 35

“13AB Address for service

“(1) For the purposes of this Act, an **address for service** means an address given by the landlord or tenant under this Act as an address at which notices and other documents relating to the tenancy will be accepted by or on behalf of the landlord or tenant, as the case may be. 5

“(2) Whenever a party is required to give an address for service, the party—

“(a) must give an address of a physical place in New Zealand; and 10

“(b) may, in addition, specify a Post Office box number, email address, or facsimile number as one of the party’s addresses for service.”

(2) Sections 15(2) and 16(2) are consequentially repealed.

11 Exceptions to requirements relating to tenancy agreements 15

Section 13D is amended by omitting “of this Act” and substituting “(and, in the case of a boarding house tenancy, **section 66C**)”.

12 Change of name or address 20

Section 16 is amended by adding the following subsection:

“(3) The obligation in subsection (1) does not apply to a contact person whose name and contact details are contained in a boarding house tenancy agreement.”

13 New sections 16A and 16B inserted 25

The following sections are inserted after section 16:

“16A Landlord must have agent if out of New Zealand for longer than 21 consecutive days

“(1) A landlord who is out of New Zealand for longer than 21 consecutive days must ensure that the landlord has an agent in New Zealand. 30

“(2) A landlord who does not already have an agent and who knows that he or she will be out of New Zealand for longer than 21 consecutive days must appoint an agent before he or she departs from New Zealand. 35

- “(3) A landlord who does not already have an agent and who has been out of New Zealand for longer than 21 consecutive days must promptly appoint an agent.
- “(4) A landlord who appoints an agent under this section must, immediately after appointing the agent,— 5
- “(a) notify the tenant of the agent’s name, contact address, and address for service; and
- “(b) if a bond is held in respect of the tenancy, notify the chief executive in the prescribed form of those particulars. 10
- “(5) An agent appointed under this section has, as against the tenant, all the rights and obligations of the landlord.
- “(6) A contravention of any of **subsections (1) to (4)** is declared to be an unlawful act.
- “16B Body corporate rules part of tenancy agreement 15**
- “(1) This section applies to residential premises that are held in a stratum estate under the Unit Titles Act 1972.
- “(2) Rules, prescribed by or under section 37 of the Unit Titles Act 1972, that affect a tenant of premises to which this section applies are taken to be terms of the tenancy agreement. 20
- “(3) A tenancy agreement that creates or evidences the letting of premises to which this section applies must set out a statement of the rules referred to in **subsection (2)**.
- “(4) The landlord must promptly give the tenant written notice of any variation of the rules referred to in **subsection (2)**. 25
- “(5) As soon as the tenant is notified of a variation, the terms of the tenancy agreement are taken to be varied accordingly.
- “(6) This section does not limit section 13A.”
- 14 New section 18A inserted 30**
- The following section is inserted after section 18:
- “18A Landlord must not require security other than permitted bond**
- “(1) A landlord may not require a tenant to provide the landlord with any form of security to secure any payment or performance arising out of, or in connection, with the tenancy. 35

- “(2) A requirement made in contravention of **subsection (1)** is declared to be an unlawful act.
- “(3) In this section, **security**—
- “(a) means—
- “(i) any interest in real or personal property; or 5
- “(ii) the power to exercise a right of the tenant, including the authority to cause an account to be debited (for example, without limitation, by reference to a card, such as the imprint of a credit card or a PIN number) or the means to obtain money from a third party; but 10
- “(b) does not include—
- “(i) a payment by way of bond that is permitted under section 18; or
- “(ii) any guarantee.” 15
- 15 Duties of landlord on receipt of bond**
- (1) Section 19(1) is amended by inserting “(whether the amount is for the whole or part of the bond)” after “any amount by way of bond”.
- (2) Section 19 is amended by inserting the following subsection 20
- “(1A) Subsection (1) does not apply if a bond of 1 week’s rent or less is paid in respect of a boarding house tenancy. In that case, **section 66D** applies instead.”
- 16 New sections 22 to 22E substituted** 25
- Section 22 is repealed and the following sections are substituted:
- “22 Agreed applications to chief executive for payment of bond**
- “(1) This section applies if— 30
- “(a) at any time a landlord or a tenant applies in the prescribed form for payment of a bond, or part of a bond; and
- “(b) the application is made—
- “(i) with the agreement of the other party; or 35
- “(ii) in favour of the other party.

“(2) The chief executive must pay the bond (or, as the case requires, part of the bond) in accordance with the terms of the application.

“22A Applications to chief executive for payment of bond without agreement of other party

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“(1) This section applies to an application in the prescribed form for payment of a bond, or part of a bond, made by a party (**party A**) without the agreement of the other party (**party B**).

“(2) The application may be made at any time after the termination of the tenancy if party A is the tenant, but must be made within 2 months of the termination of the tenancy if party A is the landlord. 10

“(3) On receiving the application, the chief executive must notify party B of the application and invite party B to indicate, within 10 working days after being notified, whether or not party B wishes to contest the application. 15

“(4) An indication by party B must be in writing, unless the chief executive waives that requirement.

“(5) If party B indicates that he or she wishes to contest the application, the chief executive must tell the parties how to apply to the Tribunal for a determination of the dispute. 20

“(6) If party B does not respond to the invitation to indicate whether or not party B wishes to contest the application, the chief executive must—

“(a) pay the bond (or, as the case requires, part of the bond) in accordance with the application; or 25

“(b) decline to make a decision and tell the parties how to apply to the Tribunal for a determination.

“(7) If party B agrees to the application, the chief executive must pay the bond (or, as the case requires, part of the bond) in accordance with the application. 30

“22B Applications to, and orders by, Tribunal

“(1) If there is a dispute between the parties as to the payment of a bond, either party may apply to the Tribunal for an order determining to whom the bond, or any part of it, is to be paid. 35

- “(2) If the tenant applies to the Tribunal and the landlord seeks payment of the bond in whole or in part, the landlord must file an application with the Tribunal that sets out the landlord’s counterclaim.
- “(3) If, more than 2 months after the termination of a tenancy, the landlord seeks payment of a bond held in respect of that tenancy but does not have the agreement of the tenant, the landlord may apply to the Tribunal for an order determining to whom the bond, or any part of it, is to be paid. 5
- “(4) If the chief executive is satisfied that a tenancy has terminated and no application for payment of a bond, or part of a bond, has been made within a reasonable time, the chief executive may apply to the Tribunal for an order determining to whom the bond, or any part of it, is to be paid. 10
- “(5) If the Tribunal makes an order concerning the payment of a bond, or part of a bond, the chief executive must make the payment in accordance with the terms of the order. 15

“**22C Payments of bond to be made out of Residential Tenancies Trust Account**

The chief executive must make any payments of a bond under **section 22, 22A, or 22B** out of the Residential Tenancies Trust Account. 20

“**22D Chief executive may take steps to refund bonds**

- “(1) The chief executive may take any steps that the chief executive considers reasonable in the circumstances to refund a bond held by the chief executive if the chief executive believes on reasonable grounds that— 25
- “(a) the tenancy to which the bond relates has terminated and no claim is made for the bond within 2 months of the termination; or 30
- “(b) an application for the refund of the bond has been approved but the bond money has not been collected within 2 months of the approval.
- “(2) The steps that the chief executive takes under **subsection (1)** may include the publication of 1 or more of the following: 35

- “(a) the name of the person to whom the bond is to be refunded if the circumstances described in **subsection (1)(b)** apply:
- “(b) the name of the tenant in whose name the bond is held:
- “(c) the amount, or approximate amount, of the bond: 5
- “(d) the location of the premises to which the bond relates.
- “(3) To avoid doubt, this section applies to all bond money held by the chief executive, whenever it is received.
- “**22E Social Welfare may disclose address information for bond refund purposes** 10
- “(1) In this section, unless the context otherwise requires,—
- “**address information**, in relation to a person, means the last known address and (if available) the telephone number of the person
- “**Social Welfare** means the department that is, with the authority of the Prime Minister, for the time being responsible for the administration of the Social Security Act 1964. 15
- “(2) The purpose of this section is to facilitate the disclosure of address information by Social Welfare to the department to enable the chief executive to locate persons who are entitled to bonds to which **section 22D(1)** applies and that the chief executive continues to hold despite previous attempts to refund them. 20
- “(3) If the chief executive is satisfied that reasonable steps have been taken, under **section 22D**, to refund a bond but that those steps have not been successful, the chief executive may, for the purposes of this section, request Social Welfare, in accordance with arrangements made with the chief executive of Social Welfare,— 25
- “(a) to ascertain whether Social Welfare holds any address information about any person entitled to the bond who is named in the request; and 30
- “(b) if that is the case, to supply that information to the department.
- “(4) On receipt of a request made under **subsection (3)**, Social Welfare may supply the information requested to any officer 35

or employee of the department who is authorised to receive that information.”

17 Rent increases

- (1) Section 24(1)(c) is amended by inserting “(or, in the case of a boarding house tenancy, not less than 28 days)” after “not less than 60 days”.
- (2) Section 24(1)(f)(i) is amended by inserting “(or, in the case of a boarding house tenancy, 28 days)” after “60 days”.
- (3) Section 24(1) is amended by repealing paragraph (g) and substituting the following paragraph: 10
- “(g) a landlord under a fixed-term tenancy—
- “(i) may not increase the rent during the term of the tenancy unless permitted by the provisions of the tenancy agreement to do so; and
- “(ii) may do so only in accordance with this section 15 and any such provisions of the tenancy agreement; and”.
- (4) Section 24 is amended by inserting the following subsection after subsection (1):
- “(1A) The provisions referred to in **subsection (1)(g)** may take the 20 form of the provisions set out in **Schedule 1**.”

18 New section 24A inserted

The following section is inserted after section 24:

“24A Expiry of temporary rent reduction

If the parties to a tenancy agree that, during a specified period 25 or until the occurrence of a specified event, the tenant is entitled to pay a lower rent,—

- “(a) the agreement is a variation of the tenancy agreement to which sections 13B and 13C apply; and
- “(b) on the expiry of the period or the occurrence of the 30 event, the rent payable before the variation is reinstated; and
- “(c) that reinstatement does not constitute a rent increase.”

19 Market rent

Section 25 is amended by inserting the following subsection after subsection (2):

- “(2A) Despite subsection (2), a tenant who is a party to a fixed-term tenancy of premises held in a stratum estate under the Unit Titles Act 1972 may apply under subsection (1) within 3 months after the tenant is notified of a change or otherwise becomes aware of a change in the rules prescribed by or under section 37 of that Act, if that change affects the tenant.”

20 New sections 28 to 28B substituted

Section 28 is repealed and the following sections are substituted:

“28 Increase of rent by agreement or order in case of substantial improvements, improved facilities, or variation of terms

- “(1) The landlord and the tenant may agree to increase the rent if the landlord has, with the consent of the tenant,—

“(a) made substantial improvements to the premises (not being general or necessary repairs) that increase the value of the premises and constitute a material benefit to the tenant:

“(b) increased or improved the facilities or services (other than general or necessary repairs) provided for the tenant:

“(c) agreed to a variation in the terms of the tenancy that benefits the tenant.

- “(2) If the tenant does not agree to the increase proposed by the landlord, the landlord may apply to the Tribunal for an order increasing the rent.

- “(3) The Tribunal may, on an application under **subsection (2)**, make an order increasing the rent by any amount the Tribunal thinks fit, if the Tribunal is satisfied that (except for the absence of agreement on increasing the rent), **subsection (1)** applies to the tenancy.

“28A Increase of rent by order in case of unforeseen expenses

The Tribunal may, on application by the landlord, make an order increasing the rent by any amount the Tribunal thinks fit if the landlord—

- “(a) has incurred expenses in respect of the premises; and 5
- “(b) the nature or the amount of those expenses could not reasonably have been foreseen when the rent was last fixed.

“28B Effect of rent increases under section 28 or 28A

- “(1) An increase of rent agreed or ordered under **section 28 or 28A** does not affect the dates on which the rent may otherwise be reviewed or increased. 10
- “(2) An increase of rent agreed or ordered under **section 28 or 28A** during the currency of any order made by the Tribunal under section 25— 15
 - “(a) does not affect the expiry date of that order; and
 - “(b) is to be treated as an amendment of that order.
- “(3) **Sections 28 and 28A** override sections 24 and 26.”

21 Accelerated rent or damages prohibited

Section 32 is amended by adding the following subsection: 20

- “(3) This section does not preclude a provision in a tenancy agreement requiring one party (the **debtor**) to reimburse the other party (the **creditor**) for any reasonable expenses or commissions paid or incurred by the creditor in recovering, or attempting to recover, any overdue payment that the debtor owes to the creditor under an order of the Tribunal.” 25

22 Tenant’s goods not to be seized

Section 33(4)(a) is amended by inserting “or **66Y**” after “section 62(1)”.

23 New section 39 substituted

Section 39 is repealed and the following section substituted: 30

“39 Responsibility for outgoings

- “(1) The landlord is responsible for all outgoings in respect of the premises that—

- “(a) are incurred whether or not the premises are occupied; and
- “(b) are incurred for common facilities.
- “(2) Without limiting the generality of **subsection (1)**, the landlord is responsible for the cost of— 5
- “(a) the general rate (within the meaning of section 13 of the Local Government (Rating) Act 2002) payable in respect of the premises; and
- “(b) insurance premiums payable in respect of the premises; and 10
- “(c) any body corporate levies payable in respect of the premises.
- “(3) The tenant is responsible for all outgoings in respect of the premises that are exclusively attributable to the tenant’s occupation of the premises or to the tenant’s use of the facilities. 15
- “(4) Without limiting the generality of **subsection (3)**, the tenant is responsible for the following charges, incurred during the tenancy, in respect of the premises:
- “(a) electricity and gas;
- “(b) telephone and Internet; 20
- “(c) supply of water if the water supplier charges for water provided to the premises on the basis of consumption.
- “(5) In this section, **premises** includes facilities that are exclusively for the use of the tenant.”
- 24 Tenant’s responsibilities** 25
- (1) Section 40(3) is amended by omitting “reside” in each place where it appears and substituting in each case “ordinarily reside”.
- (2) Section 40 is amended by inserting the following subsection after subsection (3): 30
- “(3A) The following are declared to be unlawful acts:
- “(a) a failure, without reasonable excuse, to quit the premises in contravention of subsection (1)(e)(i):
- “(b) a contravention of subsection (2)(b):
- “(c) a contravention of subsection (2)(c) in circumstances 35 that amount to harassment of a tenant or a neighbour of the tenant:

- “(d) a contravention, without reasonable excuse, of subsection (3).”
- (3) Section 40(4) is amended by inserting “(other than fair wear and tear)” after “Where any damage”.
- 25 Tenant’s fixtures** 5
- Section 42 is amended by repealing subsection (4) and substituting the following subsections:
- “(4) Any fixtures affixed by the tenant to the premises but not removed by the tenant on the expiry of the tenancy become the property of the landlord. 10
- “(5) Despite **subsection (4)**, the tenant may remove any fixtures on or after the expiry of the tenancy if the tenant—
- “(a) does so in accordance with an agreement or arrangement reached with the landlord; or
- “(b) reasonably believes that he or she is entitled to do so because of anything the landlord has said or done. 15
- “(6) If, on removing any fixture, the tenant causes any damage to the premises, the tenant must inform the landlord immediately and, at the landlord’s option, either repair the damage or compensate the landlord for any reasonable expenses incurred by the landlord in repairing the damage.” 20
- 26 Assignment and subletting by tenant**
- (1) The heading to section 44 is amended by omitting “**and subletting**” and substituting “, **subletting, or parting with possession**”. 25
- (2) Section 44(2) is amended by inserting “otherwise” after “sublet, or”.
- (3) Section 44 is amended by inserting the following subsection after subsection (2):
- “(2A) A tenant commits an unlawful act if he or she assigns, sublets, or otherwise parts with possession of the premises— 30
- “(a) in contravention of a provision of the kind described in subsection (1); or
- “(b) in any other case, without the prior written consent of the landlord.” 35

27 Landlord's responsibilities

- (1) Section 45(1) is amended by inserting the following paragraph after paragraph (c):
- “(ca) if the premises do not have a reticulated water supply, provide adequate means for the collection and storage of water; and” 5
- (2) Section 45(1)(d) is amended by repealing subparagraph (ii) and substituting the following subparagraph:
- “(ii) the tenant has given the landlord notice of the state of disrepair or made a reasonable attempt to do so; and” 10
- (3) Section 45 is amended by inserting the following subsection after subsection (1):
- “(1A) Failure by the landlord to comply with any of paragraphs (a) to (ca) of subsection (1) is declared to be an unlawful act.” 15
- (4) Section 45 is amended by inserting the following subsection after subsection (2):
- “(2A) A contravention by the landlord of subsection (2) is declared to be an unlawful act.”

28 Landlord's right of entry 20

- (1) Section 48(2) is amended by inserting the following paragraph after paragraph (d):
- “(da) for the purpose of providing services agreed to under the tenancy agreement, but only if the entry complies with any conditions specified in the tenancy agreement; or” 25
- (2) Section 48 is amended by repealing subsection (3) and substituting the following subsections:
- “(3) With the prior consent of the tenant, the landlord may enter the premises at any reasonable time for the purpose of showing the premises— 30
- “(a) to prospective tenants; or
- “(b) to prospective purchasers; or
- “(c) to a registered valuer engaged in the preparation of a report on the premises; or 35
- “(d) to a real estate agent engaged in appraising, evaluating, or selling or otherwise disposing of the premises; or

- “(e) to an expert engaged in appraising or evaluating the premises; or
- “(f) to a person who is authorised to inspect the premises under any enactment.
- “(3A) For the purposes of **subsection (3)**, the tenant— 5
- “(a) may not withhold his or her consent unreasonably; and
- “(b) may make the consent subject to any reasonable conditions.”
- (3) Section 48(6) is amended by omitting “\$500” and substituting “\$2,000”. 10
- 29 Circumstances in which tenancies are terminated**
- Section 50 is amended by repealing paragraph (a) and substituting the following paragraphs:
- “(a) in the case of a fixed-term tenancy, on the expiry of the term of the tenancy or, if any of sections 58(1)(d), **(da)**, 59, or **59A** apply, by giving notice in accordance with the applicable section: 15
- “(ab) on the death of a sole tenant under a tenancy agreement or a sole tenant under a boarding house tenancy agreement, in accordance with **section 50A** or **66W**, as the case requires.” 20
- 30 New section 50A inserted**
- The following section is inserted after section 50:
- “50A Termination following death of sole tenant**
- “(1) On the death of a sole tenant under a tenancy agreement (whether for a fixed-term tenancy or a periodic tenancy), the tenancy agreement terminates on the earliest of the following dates: 25
- “(a) the date that is 21st day after the date on which the personal representative of the tenant or a person who is the tenant’s next of kin gives the landlord written notice of the death of the tenant: 30
- “(b) the date that is the 21st day after the landlord gives the personal representative of the tenant or a person who is the tenant’s next of kin written notice to vacate the premises that are the subject of the tenancy agreement: 35

- “(c) the date that is agreed in writing by the landlord with the personal representative of the tenant or with a person who is the tenant’s next of kin:
- “(d) the date determined as the termination date of the tenancy agreement by the Tribunal on the application of the landlord under **subsection (2)**. 5
- “(2) If a landlord is unable to give notice to vacate under **subsection (1)(b)**, the landlord may apply, without notice, to the Tribunal for an order to terminate the tenancy. 10
- “Compare: Residential Tenancies Act 1997 s 228 (Vic)”
- 31 Termination by notice**
- (1) Section 51(1) is amended by omitting “and 53 of this Act” and substituting “, 53, **53A**, 59, and **59A**”.
- (2) Section 51(1) is amended by repealing paragraph (a) and substituting the following paragraph: 15
- “(a) where the owner of the premises requires the premises as the principal place of residence for the owner or any member of that owner’s family, 42 days:”.
- (3) Section 51(1) is amended by repealing paragraph (c) and substituting the following paragraph: 20
- “(c) where the owner is required, under an unconditional agreement for the sale of the premises, to give the purchaser vacant possession, 42 days:”.
- (4) Section 51(2) is amended by omitting “and 53 of this Act” and substituting “to **53A**, 59, and **59A**”. 25
- (5) Section 51(3) is amended by inserting the following paragraph after paragraph (c):
- “(ca) in any case where the tenant is given less than 90 days’ notice, set out the reasons for the termination; and”.
- (6) Section 51 is amended by repealing subsection (6) and substituting the following subsection: 30
- “(6) A party who has given an effective notice to terminate a tenancy—
- “(a) may, at any time before the expiry of the period of notice, revoke the notice with the consent of the other party; but 35

“(b) may give a further notice to terminate the tenancy only if the prior notice is revoked.”

32 Special provisions for notice terminating service tenancies

(1) Section 53 is amended by repealing subsection (1) and substituting the following subsection: 5

“(1) The landlord or the tenant must give a minimum period of notice of 14 days to terminate a service tenancy if the contract of service or, as the case requires, the contract for services has been terminated or either party has given notice to terminate that contract (subject to subsections (2) to (7)).” 10

(2) Section 53 is amended by omitting “contract of service” in subsections (2), (3), and (7)(a) and substituting in each case “contract of service or, as the case requires, contract for services”. 10

(3) Section 53 is amended by inserting the following subsection after subsection (5): 15

“(5A) **Section 50A** does not limit subsection (4) or (5).”

33 New section 53A inserted

The following section is inserted after section 53:

“**53A Special provisions for notice terminating certain student tenancies** 20

“(1) In this section, **student tenancy** means a tenancy to which this Act applies that is granted by an institution (as defined in section 159(1) of the Education Act 1989) to a person who is eligible to be a tenant by virtue of the person being— 25

“(a) a student; or

“(b) a student of a particular educational institution.

“(2) The landlord of a student tenancy, or the tenant of a student tenancy, may terminate the tenancy on 14 days’ notice if the tenant ceases to be eligible to be granted the tenancy. 30

“(3) In any proceedings before the Tribunal in which the validity of a notice under **subsection (2)** is in issue, the question of when the tenant ceased to be eligible to be a tenant under the tenancy is a question of fact to be determined by the Tribunal.”

- 34 Tribunal may declare retaliatory notice of no effect**
Section 54(1) is amended by omitting the words “of this Act”, and substituting the words “(or, in the case of a boarding house tenancy, **section 66U**)”.
- 35 Termination on non-payment of rent, damage, or assault** 5
Section 55(1) is amended by repealing paragraph (c) and substituting the following paragraph:
“(c) the tenant has assaulted, or has threatened to assault, or has caused or permitted any person to assault, or to threaten to assault, any of the following persons: 10
“(i) the landlord or any member of the landlord’s family:
“(ii) the owner of the premises or any member of the owner’s family:
“(iii) any agent of the landlord: 15
“(iv) any occupier of any building of which the premises constitute a part:
“(v) any neighbour of the premises or of any building of which the premises constitute a part.”
- 36 Termination for other breach** 20
(1) Section 56 is amended by omitting the heading and substituting the following heading: “**Termination for non-payment of rent and other breaches**”.
(2) Section 56(1)(a) is amended by inserting “(including provisions relating to the payment of rent)” after “tenancy agreement” 25
- 37 Mortgagee or other person becoming entitled to possession**
Section 58(1) is amended by inserting the following paragraph after paragraph (d): 30
“(da) in the case of a fixed-term tenancy, the tenant has the same right to give notice terminating the tenancy as the tenant would have had if the tenancy had been a periodic tenancy.”

- 38 Destruction of premises**
Section 59(1) is amended by inserting “(whether for a fixed-term tenancy or a periodic tenancy)” after “tenancy agreement”.
- 39 New section 59A inserted** 5
The following section is inserted after section 59:
“59A Termination where breach renders premises uninhabitable
“(1) This section applies if, as a result of a breach of the tenancy agreement (whether for a fixed-term tenancy or a periodic tenancy) by a party, the premises are destroyed or are so seriously damaged as to be uninhabitable. 10
“(2) If the tenant is not in breach, the rent abates.
“(3) The party who is not in breach may give notice to the other party terminating the tenancy. 15
“(4) When a landlord gives notice of termination under this section, the period of notice is not less than 7 days.
“(5) When a tenant gives notice of termination under this section, the period of notice is not less than 2 days.”
- 40 New sections 60A to 60C inserted** 20
The following sections are inserted after section 60:
“60A Fixed-term tenancy becomes periodic unless contrary notice given
“(1) On the expiry of a fixed-term tenancy of more than 90 days, the tenancy continues as a periodic tenancy with the same terms as the terms contained in the expired tenancy so far as those terms are consistent with a periodic tenancy. 25
“(2) **Subsection (1)** does not apply if—
“(a) the parties enter into a new tenancy agreement or agree to extend the existing tenancy agreement; or 30
“(b) within the effective period, either party gives the other written notice of the party’s intention not to continue with the tenancy.
“(3) The **effective period** is the period that starts on the 90th day before the date on which the tenancy expires and ends with the 21st day before that date. 35

- “(4) On an application by either party, the Tribunal may make an order specifying a date for the early termination of a tenancy that will continue, or is continuing, under **subsection (1)**.
- “(5) The Tribunal may only make an order under **subsection (4)** if satisfied that, without the order, the applicant would suffer greater hardship than the other party. 5
- “(6) Where the Tribunal makes an order under **subsection (4)**, the Tribunal may order that the applicant pay to the other party an amount determined by the Tribunal by way of reasonable compensation for any loss or damage to the other party that is likely to result from the early termination. 10
- “**60B Tenant must exercise right to renew or extend tenancy not later than 21 days before expiry**
- “(1) A tenant who wishes to exercise a right under the tenancy agreement to require the landlord to grant the tenant a renewal or an extension of the tenancy must exercise that right by giving the landlord written notice, in accordance with this section, of the tenant’s intention to exercise the right. 15
- “(2) The tenant must give notice of the tenant’s intention not later than the 21st day before the date on which the tenancy would otherwise expire. 20
- “(3) On an application, made before or after the expiry of the tenancy, by a tenant who has failed to comply with **subsection (1) or (2)** but who wishes to renew or extend the tenancy, the Tribunal may order the renewal or extension of the tenancy. 25
- “(4) The Tribunal may make an order under **subsection (3)** only if satisfied that, without the order, the tenant would suffer greater hardship than the landlord.
- “(5) If the Tribunal makes an order under **subsection (3)**, the Tribunal may order that the tenant pay the landlord an amount determined by the Tribunal by way of reasonable compensation for any loss or damage to the landlord that has resulted from the tenant’s failure to comply with **subsection (1) or (2)**. 30

“60C Notices and orders continue to apply to renewed or extended tenancies

“(1) This section applies to a tenancy (the **current tenancy**) that results from the renewal or extension of a previous tenancy (the **previous tenancy**).

5

“(2) The rent payable at the commencement of the current tenancy in respect of that tenancy—

“(a) is the rent that is payable under the previous tenancy immediately before the commencement of the current tenancy; and

10

“(b) is subject to any lawful notice or order, given or made before the commencement of the current tenancy, that varies that rent on or after that commencement; and

“(c) may be increased only if any of sections 24 to **28B** apply.”

15

41 Abandonment of premises

Section 61 is amended by adding the following subsection:

“(5) It is declared that a tenant commits an unlawful act if, without reasonable excuse, he or she abandons the premises when the rent is in arrear.”

20

42 Abandoned goods

Section 62 is amended by inserting the following subsection after subsection (1B):

“(1C) Without limiting section 78(3), the Tribunal may, in making an order for the sale or other disposition of goods under this section, direct that the order is not to take effect unless the tenant has had the opportunity to collect the goods within a period specified in the order or unless another condition is met.”

25

43 Entry without order of Tribunal prohibited

Section 63(2) is amended by omitting “to imprisonment for a term not exceeding 3 months or a fine not exceeding \$1,000” and substituting “to a fine not exceeding \$2,000”.

30

44 Possession order

Section 64(2) is amended by omitting “3 months” and substituting “90 days”.

45 Eviction of squatters

Section 65 is amended by adding the following subsection: 5

- “(3) To avoid doubt, the Tribunal has jurisdiction under this section even though the premises are not subject to a tenancy agreement.”

46 Reduction of fixed-term tenancy

- (1) The heading to section 66 is amended by inserting “**or termination**” after “**Reduction**”. 10

- (2) Section 66(2) is amended by omitting “this section” and substituting “subsection (1)”.

- (3) Section 66 is amended by adding the following subsections:

- “(3) On an application by a tenant who is a party to a fixed-term tenancy, the Tribunal may make an order terminating the tenancy if the Tribunal is satisfied that the tenant has received a notice of a rent increase that— 15

“(a) is substantial; and

“(b) is of an amount that the tenant could not reasonably foresee when he or she entered into the tenancy agreement; and 20

“(c) has caused, or will cause, serious hardship.

- “(4) On an application by a tenant who is a party to a fixed-term tenancy of premises held in a stratum estate under the Unit Titles Act 1972, the Tribunal may make an order terminating the tenancy if satisfied that— 25

“(a) the tenant is adversely affected by a change to the rules prescribed by or under section 37 of that Act; and

“(b) because of that change, it would be unreasonable to require the tenant to continue with the tenancy.” 30

*New Part 2A inserted***47 New Part 2A inserted**

The following Part is inserted after section 66:

“Part 2A
“Boarding house tenancies
“Application

“66A Application of Part

- “(1) This Part sets out special provisions that apply only to board- 5
ing house tenancies.
- “(2) The following provisions do not apply to boarding house ten-
ancies unless otherwise specifically applied:
- “(a) section 7 (relating to short fixed-term tenancies):
- “(b) section 9(1) and (2) (relating to transitional provisions): 10
- “(c) sections 36 to 42 and 44 to 49 (relating to the rights and
obligations of landlords and tenants):
- “(d) sections **50A**, 51, and 55 to 57 (relating to the termin-
ation of tenancies):
- “(e) sections 61 and 62 (relating to the abandonment of 15
premises and goods):
- “(f) section 64 (relating to possession orders).
- “(3) When applying other provisions to boarding house tenancies,
terms that are defined in **section 66B** have the meaning given
by that section. 20

“66B Interpretation for this Part

In this Part, unless the context otherwise requires,—

“**boarding house** means residential premises—

- “(a) containing 1 or more boarding rooms along with facil- 25
ities for communal use by the tenants of the boarding
house; and
- “(b) occupied, or intended by the landlord to be occupied,
by at least 6 tenants at any one time

“**boarding house tenancy** means a residential tenancy in a
boarding house— 30

- “(a) that is intended to, or that does in fact, last for 28 days
or more; and
- “(b) under which the tenant is granted exclusive rights to oc-
cupy particular sleeping quarters in the boarding house,
and has the right to the shared use of the facilities of the 35
boarding house

“**boarding house tenancy agreement** means a tenancy agreement (as defined in section 2(1)) relating to a boarding house tenancy

“**boarding room** means a room in a boarding house that is used as sleeping quarters by 1 or more tenants of the boarding house, and that is for use only by a tenant whose tenancy agreement relates to that room 5

“**contact person** means a natural person or an organisation

“**facilities** means the facilities provided by the landlord of a boarding house for the shared use by tenants of the boarding house, such as— 10

“(a) toilet and bathroom facilities:

“(b) cooking facilities:

“(c) general living, dining, or recreational areas:

“(d) laundry facilities: 15

“(e) lifts and stairways:

“(f) rubbish storage and rubbish disposal facilities:

“(g) appliances for heating or cooling premises:

“(h) communication facilities:

“(i) lawns, gardens, and outhouses: 20

“(j) any land or buildings intended for use for storage space or for the parking of motor vehicles

“**premises** means the boarding house, comprising the boarding rooms and all the facilities of the boarding house; and includes any part of any premises. 25

“Boarding house tenancy agreements

“**66C Content of boarding house tenancy agreements**

“(1) A boarding house tenancy agreement must comply with the requirements in section 13A and must, in addition, contain the following: 30

“(a) a statement of whether the tenancy is intended to last for 28 days or more:

“(b) 1 or more telephone numbers at which the landlord may be contacted by the tenant at any reasonable time:

“(c) the room number of the boarding room to which the tenancy agreement relates: 35

- “(d) a statement as to whether the boarding room that the tenant is renting is shared by other tenants and, if so, the maximum number of other tenants who may occupy the room:
- “(e) a statement of whether the tenancy is a joint tenancy and, if so, the names of the other people who will occupy the boarding room under the tenancy agreement: 5
- “(f) a statement of the services (if any) to be provided by the landlord:
- “(g) if the premises are managed by a person other than the landlord, the name and contact address (which must include a telephone number) of that person: 10
- “(h) a description of the fire evacuation procedures that apply to the premises.
- “(2) A boarding house tenancy agreement may, in addition, provide for the tenant to supply, for the purposes of **sections 66X and 66Y**, the name and contact details of a contact person. 15
- “Compare: Residential Tenancies Act 1997 s 125 (Vic)

“66D Bond of 1 week’s rent or less

- “(1) If 1 week’s rent or less is received as bond under a boarding house tenancy,— 20
- “(a) the bond need not be lodged with the chief executive, and sections 19 to **22D** do not apply; and
- “(b) the landlord must immediately give the tenant a receipt for the bond, and the receipt must comply with section 19(1)(a); and 25
- “(c) the landlord must refund the bond to the tenant when the tenancy terminates.
- “(2) Despite **subsection (1)(c)**, the landlord may retain out of a bond— 30
- “(a) any unpaid rent owing under the tenancy; and
- “(b) any other amount owing by the tenant to the landlord, such as (without limitation) costs associated with repairing damage attributable to the tenant, replacing lost keys, reimbursement for services provided by the landlord, or unpaid gas, electricity, water, or telephone charges. 35

“(3) If the landlord does not refund the bond, or withholds more of the bond than the tenant considers is justified, the tenant may apply to the Tribunal for an order.

“**66E Outgoings**

“(1) The landlord is responsible for all outgoings in respect of the boarding house that are incurred— 5

“(a) whether or not the boarding house is occupied; or

“(b) for common facilities; or

“(c) in respect of rooms that are occupied by more than 1 tenant. 10

“(2) Without limiting the generality of **subsection (1)**, the landlord is responsible for the cost of—

“(a) the general rate (within the meaning of section 13 of the Local Government (Rating) Act 2002) payable in respect of the boarding house; and 15

“(b) insurance premiums payable in respect of the boarding house.

“(3) A tenant is responsible for all outgoings that are exclusively attributable to the tenant’s occupation of a room that is exclusively occupied by the tenant. 20

“(4) Without limiting the generality of **subsection (3)**, the tenant is responsible for the following charges, incurred during the tenancy, in respect of the premises:

“(a) electricity and gas supplied to the tenant’s boarding room, if the supply is separately metered for that room: 25

“(b) telephone and Internet connected to the tenant’s boarding room.

“(5) If the landlord provides services to a tenant, and payment for those services is not included in the rent, the landlord must provide the tenant each week with an itemised account of the services provided and the amount payable by the tenant. 30

“Compare: Residential Tenancies Act 1997 ss 108, 109 (Vic)

“**66F Tenancy not assignable by tenant**

A boarding house tenancy is not assignable by a tenant.

“Compare: Residential Tenancies Act 1997 s 93 (Vic) 35

*“Rights and obligations of landlords and tenants***“66G Quiet enjoyment**

- “(1) Every tenant of a boarding house is entitled to the quiet enjoyment of the premises, without interruption by the landlord or another tenant of the boarding house. 5
- “(2) The landlord must not cause or permit any interference with the reasonable peace, comfort, or privacy of the tenant in the use of the premises by the tenant.
- “(3) The tenant must not cause or permit any interference with the reasonable peace, comfort, or privacy of any other tenant on the premises. 10
- “(4) Contravention of **subsection (2) or (3)** in circumstances that amount to harassment of a tenant is declared to be an unlawful act.
- “Compare: Residential Tenancies Act 1997 ss 113, 122 (Vic) 15

“66H Landlord’s obligations at start of tenancy

- “(1) When a tenant enters into a boarding house tenancy agreement, the landlord must give the tenant—
- “*(a)* a copy of the current house rules; and
- “*(b)* if services are or may be provided by the landlord that are not covered by the rent, a list of the services and their cost. 20
- “(2) When a tenant first takes occupation of a boarding room under a boarding house tenancy, the landlord must ensure that—
- “*(a)* the tenant has vacant possession of the room or, if the room is shared, of the tenant’s sleeping quarters in the room; and 25
- “*(b)* the room is in a reasonable state of cleanliness; and
- “*(c)* there is no legal impediment to the tenant’s occupation of the room. 30
- “Compare: Residential Tenancies Act 1997 s 109 (Vic)

“66I Landlord’s ongoing obligations

- “(1) The landlord of a boarding house must, at all times,—
- “*(a)* ensure that the facilities of the premises are in a reasonable state of cleanliness; and 35

- “(b) ensure that the premises are in a reasonable state of repair, having regard to the age and character of the premises and the period during which the premises are likely to remain habitable and available for residential purposes; and 5
- “(c) comply with all requirements in respect of buildings, health, and safety under any enactment so far as they apply to the premises; and
- “(d) ensure that there are sufficient locks or similar devices to ensure that the premises are reasonably secure; and 10
- “(e) ensure that the tenant has access at all times to his or her room and to toilet and bathroom facilities in the premises; and
- “(f) ensure that the tenant has access at all reasonable hours to the other facilities in the premises; and 15
- “(g) ensure that copies of the house rules and fire evacuation procedures are on display in the premises at all times; and
- “(h) take all reasonable steps to ensure that the house rules are observed, and to enforce them in a fair and consistent manner. 20
- “(2) **Subsection (1)** applies even if the tenant has notice, at the time when the tenancy agreement is entered into, of the state of the premises.
- “(3) The obligations in **subsection (1)** are in addition to the obligation in **section 66G(2)**. 25
- “(4) Failure by the landlord to comply with any of **paragraphs (a) to (c) of subsection (1)** is declared to be an unlawful act.
 “Compare: Residential Tenancies Act 1997 ss 120–124, 127(2) (Vic)
- “**66J Other obligations of landlord** 30
- “(1) The landlord must not interfere with the supply of gas, electricity, water, telephone services, or other services to the premises, unless the interference is necessary to avoid danger to any person or to enable maintenance or repairs to be carried out. 35
- “(2) The landlord must immediately tell the tenant if he or she puts the premises on the market and, if the premises are on the

market, the landlord must advise any prospective tenant of that fact.

- “(3) Before changing any lock or similar device, the landlord must tell every tenant of the boarding house who will be affected about the change. 5
- “(4) Failure by the landlord to comply with **subsection (1) or (2)** is declared to be an unlawful act.

“66K Obligations of tenant

- “(1) The tenant of a boarding house must—
- “(a) pay the rent when it is payable under the tenancy agreement; and 10
 - “(b) ensure that the tenant’s boarding room is occupied principally for residential purposes; and
 - “(c) keep the tenant’s room reasonably clean and reasonably tidy, and in a condition that does not create a health or safety hazard; and 15
 - “(d) notify the landlord, as soon as possible after discovery, of any damage to the premises or of the need for any repairs; and
 - “(e) observe the house rules; and 20
 - “(f) compensate the landlord for any damage done by the tenant, or by any of his or her visitors to the premises, other than damage caused by general wear and tear.
- “(2) The tenant of a boarding house must not—
- “(a) intentionally or carelessly damage, or permit any other person to damage, the premises; or 25
 - “(b) use the tenant’s boarding room, or permit the room to be used, for an unlawful purpose; or
 - “(c) cause or permit any interference with the reasonable peace, comfort, or privacy of any person residing in the neighbourhood; or 30
 - “(d) affix any fixture to the premises, or make any renovation, alteration, or addition of or to the premises, without the prior written consent of the landlord; or
 - “(e) alter, add to, or remove from the premises any lock or similar device; or 35
 - “(f) keep a pet on the premises without the permission of the landlord.

- “(3) The obligations in this section are in addition to the obligation in **section 66G(3)**.
- “(4) The following are declared to be unlawful acts:
- “(a) a contravention of **subsection (2)(b)**:
 - “(b) a contravention of **subsection (2)(c)** in circumstances that amount to harassment of a neighbour of the tenant. 5
- “**66L Tenant’s liability for damage caused by others**
- “(1) The tenant of a boarding house is responsible for anything done or omitted to be done by any person who is on the premises with the tenant’s permission if the act or omission would have constituted a breach of the tenancy agreement had it been the act or omission of the tenant. 10
- “(2) Any damage done to a tenant’s boarding room is presumed to have been caused by the tenant, unless the tenant proves otherwise or is not the only tenant of that room. 15
- “(3) For the purposes of **subsection (2)**, a person who enters the tenant’s boarding room is presumed to be on the premises with the tenant’s permission, unless the tenant proves otherwise or is not the only tenant of that room.
- “**66M Tenant’s obligations at end of tenancy** 20
- On the termination of a tenancy, the tenant of a boarding house must—
- “(a) quit the premises; and
 - “(b) remove all his or her goods from the premises; and
 - “(c) leave the tenant’s boarding room in a reasonably clean and reasonably tidy condition, and remove all rubbish from the room; and 25
 - “(d) return to the landlord all keys, security or pass cards, and other such devices provided by the landlord for the use of the tenant; and 30
 - “(e) leave in or at the premises all other chattels provided by the landlord for the use of tenants of the boarding house.
- “**66N Mitigation of damage or loss**
- If a landlord or tenant breaches any provision of the tenancy agreement, the other party must take all reasonable steps to 35

limit the damage or loss arising from the breach, in accordance with the rules of law relating to mitigation of loss or damage upon breach of contract.

“House rules

- “66O Landlord may make house rules** 5
- “(1) The landlord of a boarding house may make house rules relating to—
- “(a) the use and enjoyment of the premises; and
 - “(b) the provision of services.
- “(2) No house rule may— 10
- “(a) be inconsistent with this Act; or
 - “(b) require or purport to permit anything that is or would be illegal and, in particular, must not—
 - “(i) require or permit any form of discrimination in contravention of the Human Rights Act 1993; or 15
 - “(ii) purport to permit anything that would breach the Privacy Act 1993.
- “(3) The landlord may at any time change the house rules, but a new house rule does not come into effect until the landlord has given each tenant of the boarding house at least 7 days’ 20 written notice of the new house rule.
- “Compare: Residential Tenancies Act 1997 ss 126, 127 (Vic)
- “66P What tenant may do if he or she objects to house rules**
- “(1) A tenant may apply to the Tribunal for an order declaring a house rule to be unlawful on the grounds that it breaches **section 66O(2)**. 25
- “(2) **Subsection (1)** applies even if, when the tenancy was entered into, the tenant had notice of the relevant house rule.
- “(3) The Tribunal may, on the application of a tenant, make any of the following determinations in relation to a house rule: 30
- “(a) require the landlord to apply a house rule in a particular manner:
 - “(b) vary the rule:
 - “(c) set the rule aside.
- “(4) A landlord commits an unlawful act if he or she, in breach of 35 an order of the Tribunal made under this section,—

- “(a) adopts or maintains a house rule that has been declared unlawful; or
- “(b) refuses to apply a house rule in the manner ordered by the Tribunal; or
- “(c) does not give effect to a house rule as varied by the Tribunal; or 5
- “(d) purports to give effect to a house rule that has been set aside by the Tribunal.

“Compare: Residential Tenancies Act 1997 s 128 (Vic)

“Landlord’s right of entry” 10

“66Q Landlord has right to enter premises at any time

- “(1) The landlord of a boarding house may enter the boarding house at any time.
- “(2) The landlord must not use the facilities of the boarding house for his or her own domestic purposes unless the landlord resides at the boarding house. 15

“66R Landlord’s right to enter boarding room is limited

- “(1) The landlord of a boarding house may enter a boarding room that is currently let to a tenant only in the following circumstances: 20
 - “(a) the tenant (or, if the room is let to more than 1 tenant, any tenant of the room) agrees at the time of entry to the landlord entering the room:
 - “(b) the landlord believes on reasonable grounds that there is an emergency and that immediate entry is necessary to save life or property: 25
 - “(c) the landlord believes on reasonable grounds that there is a serious risk to life or property and that immediate entry is necessary to reduce or eliminate the risk:
 - “(d) services are provided under the tenancy agreement and it is necessary to enter the room in order to provide them, but, in this case, the entry must be in accordance with any conditions specified in the tenancy agreement or the house rules: 30
 - “(e) the Tribunal has ordered that the landlord may enter the room. 35

- “(2) The landlord may also enter the room of a tenant if the landlord—
- “(a) gives the tenant (or, if the room is let to more than 1 tenant, each tenant of the room), at least 24 hours before the entry, a notice of entry that complies with **section 66S**; and 5
 - “(b) enters the room only for the purpose set out in the notice of entry (which must be one of the purposes set out in **section 66S(1)**); and
 - “(c) enters the room between 8 am and 6 pm. 10
- “(3) A landlord entering a room under this section—
- “(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; and
 - “(c) must not interfere with the tenant’s property unless it is 15 necessary for the purpose of the entry.
- “Compare: Residential Tenancies Act 1997 ss 136, 138 (Vic)

“**66S Notice of entry**

- “(1) The purposes for which a landlord may enter a boarding room under a notice of entry are— 20
- “(a) to show the room to a prospective tenant:
 - “(b) to show the room to a prospective buyer or lender, or to a registered valuer, real estate agent, or an expert engaged in appraising or evaluating the boarding house, if the boarding house is to be sold or used as security: 25
 - “(c) where entry to the room is necessary to enable the landlord to fulfil his or her obligations under this Act:
 - “(d) where the landlord has reasonable grounds to believe that a tenant of the room has failed to comply with his or her obligations as a tenant under this Act: 30
 - “(e) the landlord wishes to confirm whether or not a tenant of the room has abandoned the tenancy:
 - “(f) the landlord wishes to inspect the room and no entry for that purpose has been made within the last 4 weeks:
 - “(g) to inspect work that the landlord has required the tenant to carry out or that the tenant has agreed to carry out. 35
- “(2) The tenant may be notified of the proposed entry orally or in writing.

- “(3) The notice must—
- “(a) state the purpose of the entry, which must be one of the purposes listed in **subsection (1)**; and
 - “(b) identify the person or persons who will enter the room; and 5
 - “(c) state the date on which entry will be made and the approximate time of entry.
- “(4) If the notice is in writing, it must be served on the tenant by—
- “(a) giving it to the tenant in person; or
 - “(b) putting it on the door of the tenant’s room; or 10
 - “(c) putting it inside the tenant’s room (for example, by sliding it under the door).
- “Compare: Residential Tenancies Act 1997 ss 137, 139 (Vic)
- “**66T Consequence of abuse, or refusal, of right of entry**
- “(1) The following are unlawful acts: 15
- “(a) entry into a tenant’s room by a landlord otherwise than in accordance with **section 66R**:
 - “(b) the use or threat of force by the landlord to enter or attempt to enter a tenant’s room (other than as provided for in **section 66R(1)(b) or (c)**): 20
 - “(c) failure by a tenant of a boarding room (or any person occupying the tenant’s room with the tenant’s permission) to permit the entry by the landlord into the tenant’s room when the person entering is exercising a right of entry in accordance with **section 66R**. 25
- “(2) A landlord who uses or threatens to use force to gain entry into a tenant’s room in breach of **subsection (1)(b)** commits an offence and is liable to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$2,000.
- “(3) If a landlord enters a tenant’s room under **section 66R(2)**, but does not comply with **sections 66R(3) and 66S**, the tenant may apply to the Tribunal for an order prohibiting the landlord from exercising the right to enter under **section 66R(2)** for a period specified in the order. 30
- “(4) If a landlord damages any property of a tenant while in the tenant’s room, the tenant may apply to the Tribunal for compensation for the damage. 35

“Compare: Residential Tenancies Act 1997 ss 140, 141 (Vic)

*“Termination***“66U Termination of tenancy by landlord**

- “(1) The landlord of a boarding house may terminate a boarding house tenancy—
- “(a) immediately, if the tenant has— 5
 - “(i) caused, or threatened to cause, serious damage to the premises; or
 - “(ii) endangered, or threatened to endanger, people or property; or
 - “(iii) caused, or threatened to cause, serious disruption to other tenants; or 10
 - “(b) on 48 hours’ notice, if—
 - “(i) the tenant is more than 7 days in arrears in paying the rent; or
 - “(ii) the tenant is using the premises for an illegal purpose; or 15
 - “(iii) the landlord believes, having complied with **section 66X**, that the tenant has abandoned the room; or
 - “(c) on 14 days’ notice, if the tenancy is also a service tenancy, in which case section 53 applies; or 20
 - “(d) on 28 days’ notice, if no reason is given.
- “(2) A notice of termination given by a landlord to a tenant of a boarding house must—
- “(a) be in writing; and 25
 - “(b) state the date on which the notice is given; and
 - “(c) state the date on which the termination takes effect; and
 - “(d) state the reason for the termination (unless 28 days’ notice is given, in which case no reason need be given); and 30
 - “(e) state the name of the tenant; and
 - “(f) state the name, contact address, and telephone number of the landlord or his or her agent.
- “(3) Subsections (4) to (9) of section 51 apply, with all necessary modifications, to a notice of termination given by the landlord of a boarding house. 35
- “(4) To avoid doubt, section 54 (which provides that the Tribunal may order that notice by a landlord is of no effect in certain circumstances) applies to boarding house tenancies.

“66V When tenant may terminate tenancy

- “(1) A tenant under a boarding house tenancy may terminate the tenancy by giving at least 48 hours’ notice to the landlord.
- “(2) A tenant need not give notice in writing.
- “(3) If a boarding house tenancy is also a service tenancy, the requirement in **section 53(1)** that a tenant give not less than 14 days’ notice does not apply. 5

“66W Termination of tenancy on death of sole tenant

A boarding house tenancy terminates on the death of a sole tenant under the tenancy. 10

*“Abandonment***“66X Abandonment by tenant**

- “(1) If the tenant of a boarding house is in arrears with the rent, and if the landlord has reason to believe that the tenant has abandoned the premises, the landlord— 15
- “(a) may put a notice on the door of the tenant’s boarding room advising the tenant that the landlord will enter the room 24 hours later to confirm whether or not the tenant has abandoned the tenancy; and
- “(b) must make all reasonable efforts to contact the contact person (if any) identified in the tenant’s tenancy agreement. 20
- “(2) The landlord must not enter the room until at least 24 hours after putting the notice on the door.
- “(3) If, after inspecting the room and making contact (if possible) with the tenant’s contact person, the landlord considers, on reasonable grounds, that the tenant has abandoned the room, the landlord may terminate the tenancy by putting a notice of termination that complies with **subsection (4)** and **section 66S(1)** on the door of the tenant’s room. 25 30
- “(4) The notice of termination must specify the date and time on which the tenancy terminates, which must be a time no sooner than 48 hours after the notice is put on the door.
- “(5) It is declared that a tenant commits an unlawful act if, without reasonable excuse, he or she abandons the premises when the rent is in arrear. 35

“66Y Abandoned goods

- “(1) On the termination of a tenancy under **section 66X(3)**, the landlord—
- “(a) may immediately remove and dispose of any perishable or dangerous goods belonging to the tenant that are on the premises; and 5
 - “(b) must take possession of all the tenant’s other goods and take all reasonable steps to ensure that they are stored securely; and
 - “(c) must make all reasonable efforts to advise the tenant or, if the tenant cannot be readily located, the tenant’s contact person, that the goods are being stored and will remain available for collection for 35 days from the date on which the landlord took possession of them. 10
- “(2) If, within 35 days of the landlord taking possession of the tenant’s goods, the tenant or the tenant’s contact person claims the goods, the landlord must release the goods to the person claiming them; and the person claiming the goods must give the landlord a receipt for them. 15
- “(3) Before passing the goods to the tenant or the tenant’s contact person, the landlord may require payment of his or her actual and reasonable costs associated with the storage of the goods. 20
- “(4) If, after 35 days, the goods remain unclaimed, the landlord—
- “(a) must hand any personal papers belonging to the tenant to a member of the police at the nearest police station, who must give a receipt for them; and 25
 - “(b) must apply to the Tribunal for an order concerning what to do with any item of the tenant’s that the landlord believes on reasonable grounds is worth \$100 or more; and 30
 - “(c) may dispose of any item of the tenant’s that the landlord believes on reasonable grounds is worth less than \$100.
- “(5) If a landlord applies to the Tribunal under **subsection (4)(b)** for an order, section 62(1)(c), (d), and (e), and (1A) to (5), applies as if the application had been made under section 62(1)(b)(ii). 35
- “(6) Disposing of a tenant’s goods otherwise than in accordance with this section is declared to be an unlawful act.

“66Z Possession orders

“(1) A landlord may apply to the Tribunal for a possession order if—

“(a) the landlord has given the tenant notice under **section 66U** and the tenant has not quit the premises within the period specified in the notice; or

“(b) the tenant has given the landlord notice under **section 66V** and the tenant has not quit the premises within the period specified by the tenant.

“(2) If the Tribunal is satisfied that the notice of termination was properly given and has not been withdrawn, it must make an order granting possession of the premises to the landlord.”

48 Constitution of Tribunal

(1) Section 67 is amended by omitting “of Housing” in each place where it appears. 15

(2) Section 67(4) (which imposes an age restriction on appointees) is repealed.

(3) Section 67(6)(a) is repealed (consequentially on the repeal of Schedule 1).

49 Term of office of Tenancy Adjudicator 20

(1) Section 68(2) (which requires Tenancy Adjudicators to retire at a certain age) is repealed.

(2) Section 68(5)(c) is amended by omitting “of Housing”.

50 Conduct of Tribunal and stationing of Tenancy Adjudicators 25

Section 71 is amended by repealing subsection (2) and substituting the following subsection:

“(2) Sittings of the Tribunal must be held, as and when necessary for the dispatch of its business, at the places that the chief executive directs.” 30

51 New section 72 substituted

Section 72 is repealed and the following section substituted:

“72 Registrars

“(1) For each office of the Tribunal, there is a Registrar, who is the Registrar of the nearest District Court or any other officer of the Ministry of Justice that the chief executive of the Ministry of Justice designates for the purpose. 5

“(2) It is the responsibility of each Registrar—

“(a) to arrange, in accordance with the instructions of the chief executive of the Ministry of Justice, for the provision of any secretarial and administrative services that may be necessary for the efficient and expeditious exercise of the Tribunal’s jurisdiction at the place for which the Registrar is appointed; and 10

“(b) to ensure that adequate arrangements are made, in consultation with the chief executive, for the filing and processing of all applications and other documents required or authorised to be filed under this Act in the office of the Tribunal at that place; and 15

“(c) to arrange fixtures for cases to be dealt with by the Tribunal at that place; and

“(d) to carry out, in respect of the exercise of the Tribunal’s jurisdiction at that place, the duties customarily carried out by a registrar of a judicial body.” 20

52 Seal of Tribunal

Section 73(2) is amended by omitting “Department for Courts” and substituting “Ministry of Justice”. 25

53 Section 75 repealed

Section 75 is repealed.

54 Tenancy Mediators

(1) Section 76(2) is amended by omitting “Ministry” and substituting “department”. 30

(2) Section 76 is amended by repealing subsection (3) and substituting the following subsection:

“(3) Without limiting subsection (1), the Minister must appoint as Tenancy Mediators sufficient persons who are not officers or employees of any of the State services to act in cases to which the Crown or any instrument of the Crown or the department 35

is a party, and in any other cases that may from time to time be required.”

- (3) Section 76(8) is amended by omitting “from the Tenancy Officer”.
- (4) Section 76(11) is amended by omitting “of Housing” in each place where it appears. 5

55 Jurisdiction of Tribunal

- (1) Section 77 is amended by repealing subsection (1) and substituting the following subsection:
- “(1) The Tribunal has, subject to the Limitation Act 1950, jurisdiction to determine in accordance with this Act any dispute that— 10
- “(a) exists between a landlord and a tenant or between a landlord and the guarantor of a tenant; and
- “(b) relates to any tenancy to which this Act applies or to which this Act did apply at any material time.” 15
- (2) Section 77(2) is amended by inserting the following paragraph after paragraph (a):
- “(ab) to determine whether any premises are or are not, or were or were not at any material time, a boarding house as defined in **section 66B**.”. 20
- (3) Section 77(2) is amended by inserting the following paragraph after paragraph (k):
- “(ka) to determine whether, and the extent to which, the guarantor of a tenant is liable to the landlord under the guarantee, and to order the guarantor to pay to the landlord any sum found to be payable under the guarantee.”. 25
- (4) Section 77(2) is amended by inserting the following paragraphs after paragraph (m):
- “(ma) to make an order declaring a house rule of a boarding house unlawful, or requiring a landlord to apply a house rule in a particular manner, or to vary a house rule, or to set a house rule aside: 30
- “(mb) to order the landlord to refrain from exercising the power under **section 66R(2)** to enter the boarding room of a tenant under a boarding house tenancy: 35

- “(mc) to direct the landlord of a boarding house about what to do with any item belonging to a tenant who has abandoned a boarding house tenancy, if the item is worth \$100 or more and has not been claimed within 35 days of the termination of the tenancy:” 5
- (5) Section 77(2)(p) is amended by omitting “whole of the tenant’s interest” and substituting “rights of the tenant”.
- (6) Section 77 is amended by inserting the following subsection after subsection (4):
- “(4A) The Tribunal does not have jurisdiction to determine a dispute so far as it raises a question as to the landlord’s conduct in the landlord’s capacity as a provider of health or disability services and the conduct is of a kind about which a complaint may be made under the Health and Disability Commissioner Act 1994.” 10 15
- (7) Section 77 is amended by repealing subsection (5) and substituting the following subsection:
- “(5) Despite **subsection (1)**, the Tribunal does not have jurisdiction to require any party to pay any sum, or to do any work to a value, or otherwise to incur any expenditure, in excess of \$50,000.” 20
- (8) Section 77(6) is amended by omitting “to a tenancy agreement to which this Act applies from abandoning so much of a claim as exceeds \$12,000” and substituting “from abandoning so much of a claim as exceeds \$50,000”. 25
- (9) Section 77 is amended by repealing subsection (7) and substituting the following subsection:
- “(7) **Subsection (5)** does not affect a claim relating to a tenancy that is for a balance of not more than \$50,000 that results from a set-off or any counterclaim in respect of the same tenancy, if the set-off or counterclaim is admitted by the claimant in the notice of claim.” 30
- 56 Orders of Tribunal**
- Section 78 is amended by inserting the following subsections after subsection (1): 35
- “(1A) A person with an interest in premises that are not subject to a tenancy agreement may apply, without notice, to the Tribunal

for an order under subsection (1)(a) declaring the status of the premises for the purposes of this Act.

“(1B) An order made on an application under **subsection (1A)** is binding on all parties to any subsequent proceedings before the Tribunal, but the Tribunal may, on application made in any such proceedings, rescind the order if satisfied that the order is wrong or, because of a change in circumstances, no longer applicable.”

57 New section 83A inserted

The following section is inserted after section 83:

“83A Referral of complaints to Health and Disability Commissioner

If a dispute or part of a dispute raises a question as to the landlord’s conduct in the landlord’s capacity as a provider of health or disability services and the conduct is of a kind about which a complaint may be made under the Health and Disability Commissioner Act 1994, the Tribunal may—

- “(a) consult with the Health and Disability Commissioner about the appropriateness of referring the dispute to the Health and Disability Commissioner; and
- “(b) following that consultation, refer the dispute in whole or in part to the Health and Disability Commissioner for his or her consideration.”

58 New sections 86 and 87 substituted

Sections 86 and 87 are repealed and the following sections substituted:

“86 Filing of applications

- “(1) Proceedings before the Tribunal are commenced by filing an application in the prescribed form, with any prescribed fee, at the appropriate office of the Tribunal.
- “(2) The chief executive must determine the appropriate office of the Tribunal for the purposes of **subsection (1)** by specifying geographical areas for which each office is responsible.
- “(3) The chief executive may from time to time vary or replace a determination described in **subsection (2)**.

“(4) The chief executive must publish every determination under **subsection (2)** and every variation or replacement under **subsection (3)** in the *Gazette* and on the Internet.

87 Duties of chief executive on receipt of application

“(1) When an application is filed in accordance with **section 86**, 5
the chief executive may refer it to a Tenancy Mediator unless,
in terms of any regulations made under this Act or of any di-
rections given by the Principal Tenancy Adjudicator, the appli-
cation is of a class that is to be referred directly to the Tribunal,
in which case the chief executive must refer the application to 10
the Registrar.

“(2) Despite **subsection (1)**, if either party informs the chief ex-
ecutive that that party refuses to have the matter considered by
a Tenancy Mediator, the chief executive must refer the appli-
cation to the Registrar.” 15

59 Functions of Tenancy Mediators

- (1) Section 88(3) and (4) are amended by omitting “Tenancy Of-
ficer” in each place where it appears and substituting in each
case “chief executive”.
- (2) Section 88(5) is amended by omitting “any party may file in 20
the appropriate office of the Tribunal a copy of the order with a
request that it be sealed” and substituting “a copy of the order
may be filed in the appropriate office of the Tribunal”.
- (3) Section 88(6) is amended by repealing paragraph (a) and sub-
stituting the following paragraph: 25
“(a) decline to seal the order, and direct the chief executive
to refer the matter to a Tenancy Mediator for further
consideration in accordance with any directions given
by the Tenancy Adjudicator; or”.

60 Tenancy Mediator to observe confidentiality 30
Section 90(1) is amended by omitting “\$500” and substituting
“\$1,000”.

61 New sections 91A and 91B inserted

The following sections are inserted after section 91:

“91A Service on tenants following application

- “(1) If a landlord files an application within 2 months after the termination of the tenancy to which it relates, any notice or other document required to be served on the tenant in connection with the application is deemed to have been properly served on the tenant if— 5
- “(a) it is sent by post addressed to the tenant at the address or the Post Office box given by the tenant as an address for service in accordance with this Act or to a contact address that the tenant has supplied to the landlord in writing within the 2 months before the application; or 10
 - “(b) it is delivered to the premises to which any address for service relates or to that contact address and either placed in the mailbox or attached to the door in a prominent position; or 15
 - “(c) it is given to or served on the tenant personally; or
 - “(d) it is given to or served on the tenant in accordance with section 136(2); or
 - “(e) it is transmitted to the email address or facsimile number given by the tenant as an address for service. 20
- “ (2) If the landlord files an application more than 2 months after the termination of the tenancy to which it relates, any notice or other document required to be served on the tenant relating to the application must be given to or served on the tenant—
- “(a) personally; or 25
 - “(b) by posting it to a contact address that the tenant has supplied to the landlord in writing within the 2 months before the application; or
 - “(c) by delivering it to the place where the tenant now lives and giving it to any person appearing to be aged 16 years or older who appears to be residing at that place and who confirms that the tenant resides there; or 30
 - “(d) by giving it to any solicitor or other agent of the tenant duly authorised by the tenant to receive service on his or her behalf. 35
- “ (3) This section overrides section 136(1) and (2).

“91B Hearing may proceed even if party not served

If a notice or other document that is required to be served on a party is not served in accordance with this Act, the Tribunal may nonetheless hear and determine, or dismiss or adjourn, the matter if it is satisfied that—

5

- “(a) all reasonable efforts have been made to serve the party as required by this Act; and
- “(b) the failure to serve the party as required is not due to any fault or unreasonable delay by the applicant.”

62 Non-attendance at hearing after due notice

10

Section 92 is amended by adding the following subsection as subsection (2):

- “(2) Where subsection (1) applies and neither the applicant nor the other party attends the hearing, the Tribunal may determine the matter only if it is satisfied that it has before it all the written information that it needs to make a proper determination.”

15

63 Right of audience

Section 93(2)(b) is amended by omitting “\$3,000” and substituting “\$6,000”.

64 Proceedings usually to be in public

20

Section 95(2) and (3) are amended by inserting “or on its own initiative” after “party to the proceedings” in each place where it appears.

65 Tribunal may require inquiry and report by Tenancy Mediator

25

- (1) The heading to section 99 is amended by adding “**or suitable person**”.

- (2) Section 99(2) is amended by omitting “Tenancy Officer” and substituting “chief executive”.

- (3) Section 99 is amended by adding the following subsection:

30

- “(3) The Tribunal may, instead of appointing a Tenancy Mediator under subsection (1), appoint a person who, in the opinion of the Tribunal, is suitably qualified or experienced, and on such an appointment—

- “(a) the person appointed is deemed to be a Tenancy Mediator for the purpose of the appointment; and
“(b) has, for that purpose, all the functions, duties, and powers of a Tenancy Mediator.”

- 66 Costs** 5
- (1) Section 102(1) is amended by omitting “subsection (2) applies” and substituting “any of subsections (2), **(4)**, or **(5)** apply”.
- (2) Section 102 is amended by adding the following subsections:
- “(4) If the applicant— 10
- “(a) has been wholly successful in his or her claim, the Tribunal must order that the respondent pay the applicant the filing fee paid for the application:
- “(b) has been partly successful in his or her claim, the Tribunal may order that the respondent pay the applicant the filing fee paid for the application. 15
- “(5) The Tribunal may make an order to give effect, in whole or in part, to a provision in a tenancy agreement requiring one party (the **debtor**) to reimburse the other party (the **creditor**) for any reasonable expenses or commissions paid or incurred by the creditor in recovering, or attempting to recover, any overdue payment that the debtor owes to the creditor under an order of the Tribunal.” 20
- 67 Enforcement of work orders**
- Section 108 is amended by inserting the following subsection after subsection (2): 25
- “(2A) A person who intentionally breaches a work order commits an unlawful act.”
- 68 Unlawful acts**
- Section 109 is amended by repealing subsection (4) and substituting the following subsections: 30
- “(4) The maximum amount that a person may be ordered to pay under this section for any unlawful act referred to in any section shown in the first column of **Schedule 1A** is the amount shown opposite that section in the second column of that schedule. 35

“(4A) The Tribunal may make an order against a person on the ground that the person committed an unlawful act even though the conduct that formed part of that act also formed part of an offence or an alleged offence against **section 109A(4)** in respect of which the person has been charged, convicted, or acquitted.” 5

69 New section 109A inserted

The following section is inserted after section 109:

“109A Tribunal may restrain further commissions of unlawful acts” 10

“(1) If the Tribunal makes an order against a person under section 109 on the ground that the person has committed an unlawful act, the Tribunal may, if satisfied that it is in the public interest to do so, make an order restraining the person from committing a further act of the same kind.” 15

“(2) The Tribunal may make an order under **subsection (1)** on its own initiative or on the application of the applicant who applied for the order, under section 109, against the person sought to be restrained.

“(3) The Tribunal must specify the term of the order, which may not exceed 6 years.” 20

“(4) Every person commits an offence who, being subject to an order under this section, intentionally contravenes the order.

“(5) A person who commits an offence against **subsection (4)** is liable on summary conviction to a fine not exceeding \$2,000.” 25

70 Failing to answer witness summons

Section 110(1) is amended by omitting “\$1,000” and substituting “\$2,000”.

71 Contempt

Section 112 is amended by omitting “\$1,000” and substituting “\$2,000”. 30

72 New heading and sections 112A to 112F inserted

The following heading and sections are inserted after section 112:

“*Contact information for enforcement purposes*

“112A Interpretation

In this section and in **sections 112B to 112F**,—

“**contact information** means information that is—

- “(a) held or supplied by a specified agency; and 5
- “(b) about a judgment debtor named in a Tribunal order; and
- “(c) of a type that the Secretary for Justice has, by notice in the *Gazette*, identified as being information that is likely to assist in locating judgment debtors for the purpose of enforcing Tribunal orders 10

“**judgment debtor** means a person who is required under a Tribunal order to pay money to the **judgment creditor** named in the order

“**specified agency** means any of the following:

- “(a) the Department: 15
- “(b) the Ministry of Social Development:
- “(c) the Ministry of Justice

“**specified database** means a database operated by a specified agency and prescribed by regulation as a specified database for the purposes of **section 112C(2)**. 20

“112B Application for contact information

“(1) The judgment creditor named in a Tribunal order may apply to the chief executive for contact information about a judgment debtor named in the order to be made available to the court in which enforcement proceedings against the judgment debtor have been, or may be, commenced. 25

“(2) The application must—

- “(a) be on a form approved for the purpose by the chief executive; and
- “(b) be accompanied by the prescribed fee; and 30
- “(c) have a copy of the relevant Tribunal order attached.

“(3) The applicant must supply the following information in the application:

- “(a) the full name of the judgment debtor:
- “(b) the number of the Tribunal order: 35
- “(c) the judgment debtor’s last known address, to the best of the applicant’s knowledge:

- “(d) the date on which the applicant believes the judgment debtor last lived at the last known address:
- “(e) any other information known to the applicant that is likely to assist in a search by a specified agency for contact information about the judgment debtor, such as date of birth and any other names by which the judgment debtor is known: 5
- “(f) the steps taken by the applicant to find any contact information about the judgment debtor.
- “(4) If a judgment creditor is entitled under an enactment to recover any costs relating to the enforcement of an order, then the prescribed fee paid by an applicant under this section is to be treated as a cost that is recoverable, unless the judgment debtor proves that the information was publicly available at the time the applicant applied for the information. 15
- “112C Application referred to specified agency**
- “(1) The chief executive must refer an application under **section 112B** to a specified agency if—
- “(a) the application is properly completed, the prescribed fee is paid, and a copy of the relevant order is attached; and 20
- “(b) the chief executive is satisfied that the applicant has, before making the application, made reasonable efforts to find contact information about the judgment debtor; and
- “(c) the chief executive believes on reasonable grounds that a search by a specified agency may find contact information about the judgment debtor that may assist in the enforcement of the Tribunal order. 25
- “(2) A specified agency that receives an application forwarded by the chief executive must search its specified databases in order to find contact information that relates to the judgment debtor identified in the application. 30
- “(3) After searching its specified databases, the specified agency must,—
- “(a) if it finds contact information about the judgment debtor, forward it to the chief executive; or 35

- “(b) if it does not find contact information about the judgment debtor, or if it believes that the judgment debtor is dead, advise the chief executive of that fact.

“112D Response to applicant

- “(1) If the chief executive receives contact information from a specified agency in response to an application, the chief executive must— 5
- “(a) forward the contact information to the Secretary for Justice; and
- “(b) advise the applicant that information has been forwarded to the Secretary for Justice. 10
- “(2) If the chief executive receives advice that the specified agency has not found contact information about the judgment debtor, the chief executive must—
- “(a) advise the applicant accordingly; or 15
- “(b) if the chief executive believes on reasonable grounds that another specified agency may hold contact information about the judgment debtor, forward the application to that specified agency, in which case **section 112C(2) and (3)** and this section apply again. 20
- “(3) If the chief executive receives advice that the specified agency believes the judgment debtor is dead, the chief executive must advise the applicant accordingly.
- “(4) If the chief executive does not advise the applicant under any of **subsections (1) to (3)** within 30 days of receipt of the application, the chief executive must write to the applicant explaining the reason for the delay. 25

“112E Specified information sent to District Court

- When the Secretary for Justice receives contact information from the chief executive, he or she must— 30
- “(a) determine in which District Court enforcement proceedings should be commenced; and
- “(b) send the contact information to the Registrar of that District Court; and
- “(c) advise the applicant— 35
- “(i) that the information has been sent to the Registrar of that District Court; and

“(ii) that enforcement proceedings may be commenced in that District Court or, if they have already been commenced in that or any other District Court, that enforcement proceedings may now continue in, or be transferred to, that District Court. 5

“112F Non-disclosure of contact information

“(1) If contact information has been sent to the Registrar of a District Court in connection with enforcement proceedings relating to a Tribunal order, neither the Registrar nor the Court staff may disclose the contact information unless the disclosure is necessary for the purpose of enforcing the order or for determining any proceedings associated with enforcement of the order. 10

“(2) No person may search, inspect, or copy any court file that contains contact information, unless a Judge directs otherwise. 15

“(3) A Judge may make a direction under **subsection (2)** only if satisfied that the contact information contained on the file is—
 “(a) already known to the person seeking to search, inspect, or copy the record; or 20
 “(b) no longer current.”

73 New section 113 substituted

Section 113 is repealed and the following section substituted:

“113 Chief executive to provide assistance

The chief executive must ensure that assistance is reasonably available from his or her staff to any person who seeks it in completing any forms required by this Act or any rules made under section 116, or in doing anything in relation to the filing of an application or an appeal against an order of the Tribunal, or the enforcement of an order of the Tribunal.” 25 30

74 Powers of entry of Tenancy Mediators

(1) Section 114 is amended by repealing subsection (6) and substituting the following subsection:

“(6) A Tenancy Mediator who enters any premises under this section must,— 35

- “(a) on initial entry, produce evidence of his or her identity;
and
“(b) while subsequently in the premises, produce that evidence to any person who reasonably requests to see it.”
- (2) Section 114(7) is amended by omitting “\$1,000” and substituting “2,000”. 5
- 75 Rules of procedure**
Section 116(2)(d) and (g) are amended by omitting “Tenancy Officers” in each place where it appears and substituting in each case “chief executive”. 10
- 76 Appeal to District Court**
Section 117 is amended by inserting the following subsection after subsection (1):
“(1A) A decision referred to in subsection (1) includes the decision to grant, or refuse to grant, an application under section 105 for a rehearing.” 15
- 77 General functions and powers of chief executive**
Section 123(1) is amended by inserting the following paragraph after paragraph (d):
“(da) to supervise the operations of the office of the Tribunal and to work in close co-operation with the Registrar to ensure that disputes arising within the jurisdiction of the Tribunal are dealt with efficiently and expeditiously.”. 20
- 78 Annual report**
Section 126(1) is amended by omitting “Ministry of Housing” and substituting “department”. 25
- 79 Residential Tenancies Trust Account**
(1) Section 127(4) is amended by omitting “section 22” and substituting “**sections 22 to 22D**”.
(2) Section 127 is amended by inserting the following subsections after subsection (7): 30

- “(7A) All money paid into the Residential Tenancies Trust Account as bond money belongs to the Crown and must be paid into a Crown Bank Account if the money—
- “(a) is not claimed within 6 years of the end of the tenancy to which the bond relates; or 5
 - “(b) is to be refunded under an approval given by the chief executive, but has not been collected within 6 years of the date of that approval.
- “(7B) Despite **subsection (7A)**, during the first year after the commencement of this section, payment of money into a Crown Bank Account may be delayed to enable the chief executive to exercise the powers under **section 22D**.” 10

80 Tribunal or chief executive may require terms of tenancy agreement

Section 133(2) is amended by omitting “\$200” and substituting “\$400”. 15

81 Service of documents

- (1) Section 136(1) is amended by repealing paragraphs (b) to (d) and substituting the following paragraphs:
- “(b) it may be sent by post addressed to the landlord or the tenant at the address or the Post Office box given by the landlord or the tenant as an address for service in accordance with this Act: 20
 - “(c) it may be delivered to the premises to which any address for service relates, and either placed in the mailbox or attached to the door in a prominent position: 25
 - “(d) it may be transmitted to the email address or facsimile number given by the landlord or the tenant as an address for service.”
- (2) Section 136(2) is amended by repealing paragraph (c) and substituting the following paragraph: 30
- “(c) at the premises to which any address for service given by the tenant relates, by giving it to any person appearing to have attained the age of 16 years and to be residing at those premises; or” 35
- (3) Section 136 is amended by inserting the following subsection after subsection (2):

“(2A) **Section 91A** overrides subsections (1) and (2) in relation to service on tenants in the circumstances set out in that section.”

82 New section 136A inserted

The following section is inserted after section 136:

“**136A Calculation of periods**

5

Where this Act requires notice to be given of any thing and prescribes a following period within which, or on the expiry of which, a thing is required or permitted to be done, or a change in the parties’ rights, obligations, interests, or status is to take effect, the period—

10

“(a) commences on the first day after the notice is given or deemed to be given under section 136; and

“(b) ends with the close of the last day of the period.”

83 Regulations relating to other matters

Section 140(1) is amended by inserting the following paragraph after paragraph (e):

15

“(ea) prescribing specified databases for the purposes of **section 112C(2)**.”

84 Section 141 repealed

Section 141 is repealed.

20

85 New Schedules 1 and 1A substituted

Schedule 1 is repealed and the **Schedules 1 and 1A** set out in the Schedule to this Act are substituted.

Part 2

Transitional provisions

25

86 Existing tenancies

(1) In this Part,—

boarding house tenancy has the same meaning as in **section 66B** of the principal Act

existing tenancy, in relation to a provision of the principal Act amended, substituted, or inserted by this Act, means a tenancy (including a boarding house tenancy) that—

- (a) was granted before the commencement of the provision of this Act that made the amendment, substitution, or insertion; and 5
 - (b) subsisted immediately before that commencement.
- (2) A provision of the principal Act as amended, substituted, or inserted by this Act, so far as it is applicable to any tenancy, applies to the tenancy even if the tenancy is an existing tenancy. 10

87 Existing tenancies not affected by certain amendments

- (1) A provision of the principal Act that is listed in **subsection (2)**, so far as it is applicable to an existing tenancy, applies to the tenancy in the way the provision read immediately before the amendment or substitution of the provision by this Act came into force. 15
- (2) The provisions are as follows:
- (a) the definition of **service tenancy** in section 2(1) of the principal Act: 20
 - (b) section 7 of the principal Act (which relates to short fixed-term tenancies):
 - (c) section 17 of the principal Act (which prohibits the requiring of key money):
 - (d) section 25 of the principal Act (which relates to market rent): 25
 - (e) section 39 of the principal Act (which relates to outgoings):
 - (f) section 48 of the principal Act (which relates to the landlord's right of entry): 30
 - (g) section 51 of the principal Act (which relates to termination by notice):
 - (h) section 53 of the principal Act (which relates to the termination of service tenancies):
 - (i) section 58 of the principal Act (which relates to a mortgagee or other person becoming entitled to possession): 35
 - (j) section 66 of the principal Act (which relates to the reduction of fixed-term tenancies).

- (3) The following sections of the principal Act as inserted by this Act do not apply to existing tenancies:
- (a) **section 16B** (which deems body corporate rules to be part of tenancy agreements):
 - (b) **section 18A** (which prohibits the requiring of certain securities): 5
 - (c) **section 53A** (which relates to the termination of certain student tenancies).
- (4) This section overrides **section 86**.
- 88 Application of certain provisions to existing tenancies deferred** 10
- (1) During the period of 6 months after the commencement of **section 13** of this Act, **section 16A** of the principal Act (which requires a landlord to have an agent if out of New Zealand for longer than 21 consecutive days) does not apply to existing tenancies, but applies to those tenancies after the expiry of that period. 15
- (2) During the period of 12 months after the commencement of **section 40** of this Act, **sections 60A to 60C** of the principal Act (which relate to the circumstances in which fixed-term tenancies become periodic tenancies) do not apply to existing tenancies, but apply to those tenancies after the expiry of that period. 20
- (3) This section overrides **section 86**.
- 89 Boarding house tenancies** 25
- (1) This section applies to boarding house tenancies.
- (2) If, on the commencement of **Part 2A** of the principal Act, a landlord, or any person on behalf of the landlord, holds a bond paid in respect of an existing tenancy, the following provisions apply: 30
- (a) in the case of a bond of more than 1 week's rent, section 19(1) of the principal Act must be complied with within 23 working days of the commencement of **Part 2A** of the principal Act:
 - (b) in the case of a bond of 1 week's rent or less, **section 66D(1)(b)** of the principal Act must be complied with 35

within 5 working days of the commencement of **Part 2A** of the principal Act.

- (3) Sections 13, 13A, and **66C** of the principal Act (which relate to the form and content of boarding house tenancy agreements) do not apply to existing tenancies. 5
- (4) **Section 66E** of the principal Act (which relates to outgoings) does not apply to existing tenancies.
- (5) Section 9(2) and (3) of the principal Act (which are transitional provisions) apply to existing tenancies as if the references in those provisions to the commencement of this Act were references to the commencement of **Part 2A** of the principal Act. 10

90 Bond refund applications

If an application for payment of a bond under section 22 of the principal Act (as in force before the commencement of this section) is received by the chief executive and appears to have been posted or lodged before that commencement, then the application must be dealt with under the principal Act as in force before that commencement. 15

91 Proceedings before Tribunal

- (1) Every application filed with the Tribunal under section 86 of the principal Act before the commencement of this section must be dealt with under the principal Act as in force before that commencement. 20
- (2) The Tribunal may not determine or otherwise deal with any dispute that arose before the commencement of this Act unless the Tribunal could have determined or otherwise dealt with that dispute at the time it arose. 25
- (3) The Tribunal may not make any order in respect of a matter that arose before the commencement of this Act unless the Tribunal could have made that order at the time the matter arose. 30

92 Unlawful acts

Whenever a question arises whether an act or omission constitutes an unlawful act under the principal Act, the question

must be determined in accordance with the principal Act as it read at the time of the act or the omission.

Schedule	s 85
New Schedules 1 and 1A substituted	
Schedule 1	s 24(1A)
Clauses for rent increases in fixed-term tenancy agreements	5

Select one of the following:

Provision A

The landlord may review the rent from time to time and may increase the rent in accordance with section 24 of the Residential Tenancies Act 1986. No increase will take effect within 180 days after the date of the commencement of the tenancy or within 180 days after the date on which the last increase took effect. 10

Provision B

The rent will be reviewed from time to time and may be increased once in each year to take effect on [date] if prior notice of the increase has been given in accordance with section 24(1)(a) to (c) of the Residential Tenancies Act 1986. 15

Provision C

The rent will increase by [\$ amount] on [date], being a date that is at least 180 days after the commencement of the tenancy, and will then increase by the same amount on [date/dates], being [a date that is] [dates that in each case are] at least 180 days after the previous rent increase. 20

25

Schedule 1A
Amounts for unlawful acts

s 109(4)

Section		Amount (\$)
12	(Unlawful discrimination)	4,000
16A(6)	(Landlord failing to appoint agent when outside New Zealand for longer than 21 consecutive days)	1,000
17	(Requiring key money)	1,000
18	(Landlord requiring bond greater than amount permitted)	1,000
18A	(Requiring unauthorised form of security)	1,000
19(2)	(Breach of duties of landlord on receipt of bond)	1,000
23	(Landlord requiring rent more than 2 weeks in advance or before rent already paid expires)	1,000
27(2)	(Landlord requiring rent in excess of market rent order)	200
29	(Failure by landlord to give receipts for rent)	200
33	(Landlord seizing or disposing of tenant's goods)	2,000
38(3)	(Interference with privacy of tenant)	2,000
40(3A)(a)	(Failing to observe, without reasonable excuse, the tenant's duties upon termination)	1,000
40(3A)(b)	(Using or permitting premises to be used for unlawful purpose)	1,000
40(3A)(c)	(Harassment of tenant or neighbour)	2,000
40(3A)(d)	(Tenant failing to ensure number of residents does not exceed maximum allowed)	1,000
44(2A)	(Assigning or subletting a tenancy when prohibited to do so or without the landlord's written consent)	1,000
45(1A)	(Landlord's failure to meet obligations in respect of cleanliness, maintenance, or building or health and safety requirements)	3,000
45(2A)	(Landlord interfering with supply of services to premises)	1,000
46(3)	(Altering locks without consent of other party)	1,000
48(4)(a)	(Unlawful entry by landlord)	1,000
61(5)	(Abandonment of premises without reasonable excuse)	1,000
66G(4)	(Harassment of tenant in boarding house)	2,000
66I(4)	(Landlord of boarding house failing to meet obligations in respect of cleanliness, maintenance, or building, or health and safety requirements)	3,000
66J(4)	(Landlord of boarding house interfering with services or failing to advise that premises on the market)	1,000

Schedule	Residential Tenancies Amendment Bill	
Section		Amount (\$)
66K(4)(a)	(Using or permitting premises to be used for unlawful purposes)	1,000
66K(4)(b)	(Harassment of neighbour)	2,000
66P(4)	(Landlord of boarding house failing to comply with order relating to house rules)	2,000
66T(1)	(Contraventions relating to entry, or attempted entry, of tenant's room in boarding house)	1,000
66X(5)	(Abandonment of premises without reasonable excuse)	1,000
66Y(6)	(Landlord of boarding house disposing of tenant's goods otherwise than in accordance with section)	2,000
108(2A)	(Intentional breach of work order)	3,000
137(2)	(Contracting to contravene or evade the provisions of this Act)	1,000