

Residential Tenancies Amendment Bill

Government Bill

As reported from the Social Services Committee

Commentary

Recommendation

The Social Services Committee has examined the Residential Tenancies Amendment Bill (the bill) and recommends that it be passed by majority with the amendments shown. ACT New Zealand, New Zealand National and New Zealand First oppose this bill and have expressed their view at the end of this commentary. When we use the phrase ‘most of us’, this excludes the committee members from those parties.

Introduction

At present, boarding houses are not covered by the Residential Tenancies Act 1986 (the Act). This bill introduces statutory provisions to govern long-term boarding house tenancies. It stipulates the rights and obligations of boarding house landlords and tenants, and enables them to take their disputes before the Tenancy Tribunal. While some of the rights and obligations of landlords and tenants will be the same for boarding house tenancies as for general tenancies, boarding house landlords will have greater rights in relation to termination of tenancies. Unlike general tenancies, there will be no requirement to lodge bonds that are for one week’s rent or less, and the provisions relating to how boarding house landlords deal with abandoned tenants’ possessions are different. Due to the communal nature of living in boarding houses, landlords will also be able to introduce house rules. The bill also amends a number of provisions of the Act relating to general tenancies. The bill is not based on a

total review of the Act and, therefore, does not seek to revise the Act in its entirety.

Existing rights of boarding house owners and tenants

Tenants in boarding houses have few rights compared with tenants in general residential tenancies. The difference arises because, unlike tenants in general residential tenancies who have exclusive rights of occupation, tenants in boarding houses share common facilities with other boarders. The only protection afforded boarding house tenants currently comes from common law and some generic provisions of the Consumer Guarantees Act 1993. Specific statutory provisions provided for in this bill will enable the rights and obligations of boarders and boarding house owners to be clearly defined and stipulated.

The right to take disputes to the Disputes Tribunal exists but the lack of clarity regarding the rights and obligations of boarding house owners and tenants currently makes this course of action unusual. An additional disincentive is that, unlike general tenancy cases, the Disputes Tribunal does not offer a free advisory service or mediation service to enable boarding house owners and tenants to resolve disputes.

The nature of boarding house tenants

People without family or other support, and those unable to afford or cope with other forms of accommodation, frequently live in boarding houses. Increasing numbers of young women are moving into boarding houses. Often, they are women leaving violent relationships or are recovering mental health patients. There is a view that some boarding house residents are unable to or incapable of negotiating fair agreements, or ensuring that they have been granted their basic legal rights when no specific legislation stipulating their minimum tenancy rights and obligations exists. They may, in addition, be either unwilling or unable to pursue their common law or Consumer Guarantees Act remedies when disputes do occur.

Reducing inequalities for boarding house tenants

It is anomalous that tenants in a general residential tenancy have statutory rights and protection through the Act but that residents of a boarding house, who have a licence to occupy a room and share common facilities, do not. The inclusion of boarding houses in the

Act is designed to rectify this omission. The bill mirrors some of the rights and obligations that are applicable to landlords and tenants of general tenancies. Other rights and obligations are varied to reflect the communal nature of living in boarding houses.

The bill defines a 'boarding house' as a residential premise containing one or more rooms with facilities for communal use by tenants and intended to be occupied by at least four tenants. A 'boarding house tenancy' is one that is intended to, or does in fact, last for more than 28 days. The reason for the 28-day rule is to fall in line with GST legislation, which applies a rate of only 7.5 percent if boarding house accommodation is for more than 28 days.

The bill still excludes short-term hotel and motel accommodation from the Act. It also excludes hostel accommodation provided by education providers.

Synopsis of submissions

The Residential Tenancies Amendment Bill was referred to the previous committee on 2 May 2002 and carried over to this Parliament on 11 June 2002 at the stage it was at on the dissolution of the last Parliament. The closing date for submissions was 23 September 2002. We received 201 submissions from interested groups and individuals. We heard 55 submissions. Hearing evidence and consideration took 17 hours and 19 minutes.

The proposed extension of the Act to cover boarding houses drew general comment from many submitters. The majority of submissions focused on specific issues arising out of proposed amendments and some gave their attention to other aspects of the current legislation besides those relating to the new bill. With few exceptions, landlord submitters tend to believe the law at present favours tenants, while tenant organisations recommend even more protection for tenants than is currently in the bill.

Submissions made by landlords outnumbered those made by or on behalf of tenant groups. We consider this may reflect the greater resources and ability of landlords to prepare submissions and appear before a select committee. Tenants tend to be a disempowered sector and generally do not have the resources or expertise to prepare submissions. Neither do they have the confidence or the ability to appear before a select committee to put their particular point of view. We are grateful to those who did.

Key issues raised in submissions

The issues raised in submissions fell into two categories, namely new provisions concerning boarding houses and boarding house tenancies, and other issues concerning the Act.

Boarding house tenancy issues raised in submissions

Defining what constitutes a boarding house was discussed in many submissions. Clarity was sought on whether university hostels and flats, YWCA hostels, Salvation Army accommodation, caravan parks and housing provided for staff use on farms would come under the boarding house category.

Boarding house investors oppose the inclusion of boarding houses in the bill

More than a quarter of submissions (57), which came from boarding house owners, landlords and property investors expressed general opposition to the extension of the Act to include boarding house accommodation. The arguments against including boarding houses fell into two categories. First, the submitters believed the proposed bill would be unnecessarily restrictive for casual, short-term, room-by-room tenancies, which generally involve low-income tenants and relatively low rentals. Second, the submitters argued that the proposed bill would create higher compliance and management costs for landlords. As a corollary, these submitters also contended boarding houses would become an unlikely investment choice for property owners, some even predicting that boarding houses would disappear entirely. One submitter claimed that banks are reluctant to lend on boarding houses, insurance is hard to obtain, and selling them is difficult.

Evicting unruly or dangerous tenants from boarding houses

The ability to evict unruly or dangerous tenants was mentioned by many submitters. Submitters were divided over providing more protection for tenants and more protection for landlords. Most landlords who made submissions wanted the bill clarified to allow for speedy eviction, especially in the case of tenants behaving dangerously. Some submitters considered leaving a room vacant for 48 hours after abandonment was unjustified, as it was obvious the tenant had absconded and there was no reason not to let the room again immediately.

The right of landlords to enter boarding house rooms

Many submitters asked for clarity in defining the rights of landlords to enter rooms in boarding houses only if there is an emergency and immediate entry is necessary to save life or property. Submitters contended that, because of the nature of boarding house residents, unsafe practices such as leaving on heaters when the tenant was absent occur frequently. These practices could pose severe fire risks and place other boarders in life-threatening danger. Other practices, such as leaving piles of rubbish and food waste in rooms, could lead to the whole boarding house becoming infested with cockroaches, ants and mice. As a corollary, a few submitters noted that, if landlords were allowed easier access to boarding house rooms, safety risks to single women could arise. One submitter suggested that easier access to rooms by landlords could lead to assaults on women.

Provision of house rules in boarding houses

The provision for a landlord of a boarding house to make house rules relating to the quiet enjoyment of the premises was welcomed by a number of submitters, especially where such rules related to safety issues. Other submitters, however, who already provided house rules to tenants, found they were largely ignored and considered them a waste of time.

Fire safety issues in boarding houses

From a safety viewpoint, the New Zealand Fire Service expressed strong support for the bill, on the grounds that it will assist boarding house owners and landlords to comply with their obligations under the Fire Service Act 1975. The inclusion of fire evacuation procedures as part of the tenancy agreement is prudent. All of us recommend an amendment to new section 66C to provide for this.

Poor conditions in some boarding houses

A number of submitters remarked on the poor conditions found in some boarding houses such as showers with no shower heads, no telephones, no laundry facilities, and the provision of one element to cook on for 30 people. These submitters wanted the bill to clarify minimum standards for boarding houses.

The bill seen as a protection for tenants of boarding houses

A number of submitters (23) expressed general support for the extension of the Act to boarding house tenants. They see the bill offering some protection to boarding house tenants, who frequently have mental health problems and live in boarding houses for long periods. One submitter reported he had tenants staying in his rooming house for over 10 years. Other submitters saw the extension to include boarding houses as providing greater consistency and clarity in the law, including even-handed treatment for both tenants and landlords.

Storing boarding house tenants' possessions

The storage provisions to protect tenants' possessions were raised by a number of submitters. They pointed out that frequently tenants' possessions have not been abandoned. Rather, the storage of them can be a particular problem for those tenants whose mental illnesses are episodic in nature. On the other hand, the problem of storing possessions that may appear to be of little value can place a considerable burden on landlords.

Issues raised in submissions about non-boarding house matters**Unpaid rent and rent arrears**

Submissions from landlords suggested that unpaid rent and rent in arrears is their biggest problem with tenants. Landlords see the introduction of direct debiting rent money through Work and Income New Zealand (WINZ), which is part of the Ministry of Social Development, as an effective method of dealing with the problem. Submitters representing tenants also welcomed the suggestion and said tenants would benefit from having rent removed by WINZ, as this would assist them with their budgeting. In their submissions, many landlords also requested that the Department for Courts provide them with the addresses of defaulting tenants.

Unlawful retention of bond money

A number of submitters claimed that the return of bond money to tenants was frequently a problem, as some unscrupulous landlords found ways of retaining the money for themselves.

Using unclaimed bond money for educational purposes

Virtually all submitters expressed the view that unclaimed bond money should be directed to tenancy services to improve the tenant/landlord relationship rather than the consolidated fund. We all, including ACT New Zealand, New Zealand National and New Zealand First, agree with that view but since there is a legal impediment to a direct transfer of trust fund money, we urge this be considered during the Budget process.

Payment of letting fees by tenants

Submitters were divided about the payment of letting fees by tenants and wanted to see clarification in the bill. Landlords and the Real Estate Institute are of the view that tenants should pay the letting fee, as the agent provides a service for the tenant by finding the tenant a property. However, tenant groups and Community Law Centres argued that the landlord should pay the letting fee because the landlord engaged the agent to help the landlord find a tenant and therefore the service was for the landlord. They also contended that tenants (particularly those on low incomes) and students had considerable start-up costs and having to pay the letting fee placed a heavy financial burden on them.

Letting fee

The present law allows the letting fee to be paid by either the landlord or the tenant. However, a practice has developed whereby landlords and real estate agents regularly require a tenant to pay the letting fee associated with the tenancy. The bill proposes that tenants cannot be made to pay a letting fee by any person and that the landlord shall pay the letting fee.

Submissions from 118 landlords and property managers compared real estate commissions, which are paid by the vendor, to the use of the services of a letting agent. The submitters argued that tenants should pay a letting fee to landlords and property managers. They contended letting agents were providing a valuable service and that tenants should pay for this service. Submitters argued that if landlords could not charge tenants, it was possible that rents would rise to absorb the cost of the letting fee. They also pointed out that tenants would not necessarily be disadvantaged if landlords were permitted to charge a letting fee because tenants had the choice of

either going to a letting agency or consulting newspapers for advertisements for accommodation.

Tenant groups, community law centres and Victoria University contended that tenants should not have to pay the letting fee. This is because they believed that the real estate agent provided the service to the landlord rather than the tenant and also because it caused a heavy financial burden on tenants at the start of the tenancy.

Eight submitters supported prohibiting landlords from charging tenants letting fees. If landlords were permitted to charge letting fees, submitters argued low-income tenants would be exploited or excluded from obtaining appropriate accommodation because of the associated cost.

Fining landlords exemplary damages

Fining landlords exemplary damages of up to \$3,000 for standard accommodation drew comment from a number of submitters. Some landlords remarked that this provision was weighted against them and that there were no corresponding penalties for tenants. One landlord, who owns houses at the bottom end of the rental market, was worried about fines for exemplary damages. He was providing inexpensive accommodation but believed that he might be required to carry out expensive improvements under this provision. If this occurred, he would be required to offset the costs of the improvements by raising rentals, thereby reducing the availability of low cost accommodation.

Charging tenants for waste water

Many submitters were confused about provisions in the bill relating to charging tenants for waste water. Those provisions sought to clarify the law as it stands and not introduce any new provisions. The confusion arose in part because of regional differences in water charges. Many landlords argued that as tenants were already liable for the costs of utilities such as electricity, gas, and metered water, they should also pay for waste water. The counter argument was that waste water needed to be distinguished from water because the cost of maintaining sewers is borne by the landlord as part of rates in most regions around the country.

Proposed amendments

The definition of a boarding house

Many submitters asked for the definition of a boarding house to be clarified. We have recommended a number of amendments to achieve this clarification.

Seven submitters representing educational institutions sought clarification of clause 6(1) of the bill, which excludes hostel accommodation provided by education providers from the provisions of the bill. We recommend that an exemption apply to hostels or halls of residence that provide student accommodation and are operated by a state school or institution as respectively defined by sections 2 and 159(1) of the Education Act 1989.

The Salvation Army supports the extension of the Act to boarding houses in general but was concerned that it would be unable to meet all the requirements of the bill. The Salvation Army provides social rehabilitation programmes, which necessitate regular contact with residents to ensure they are taking their medication and following a rehabilitation programme. The Salvation Army and at least ten other such organisations are currently funded to provide rehabilitation programmes. The Salvation Army was concerned that the requirements of social rehabilitation programmes could lead to breaches of the right of entry provisions in the bill. We recommend those premises that provide social rehabilitation programmes be excluded from the provisions of the Act.

Most of us recommend also that the definition of a boarding house in new section 66B(b) be changed to cover accommodation provided for at least six tenants at any one time, rather than four tenants as currently suggested in this clause. The change will provide consistency with the existing definition of boarding houses in the Building Act 1991 and the Fire Services Act 1975.

Termination of certain tenancies

In its submission, Federated Farmers pointed out that employers sometimes have boarding houses that are for employees only. The bill currently excludes boarding houses from the application of section 53 of the Act, which allows an employer to terminate a service tenancy within 14 days' notice if a service contract is terminated. As the bill stands now, an employer will be required to give 28 days' notice if a service contract is terminated. We recommend that the employers who provide boarding house accommodation be

permitted to give 14 days notice to terminate if the service contract is terminated.

In addition, where an education provider provides flats it is presently covered by the Residential Tenancies Act, and requires the landlord/education provider to give 90 days notice to terminate a tenancy. This seems unrealistic in a situation when the student has withdrawn from the course or has been dismissed on disciplinary grounds. Therefore it is proposed that if a student withdraws or is dismissed from a course, then the education provider, as landlord, should have the right to terminate the tenancy with 14 days' notice. This is similar to the situation of an employer providing accommodation under a service tenancy to an employee. The employer is permitted to terminate the accommodation with 14 days notice if the employee resigns or is dismissed, and the employer needs to house a new employee. Most of us recommend introducing a new provision so that a provision parallel to section 53 of the Act applies to education providers in the same way as it does to employers.

Reconstruction and repairs

Two tenant groups questioned why the bill provided for the termination of a tenancy with 14 days' notice for repairs, reconstruction and renovation, when a landlord who wishes to do renovations should be able to give 28 days' notice as set out in new section 66U(1)(c). The submitters contend that landlords could easily abuse this provision. Most of us note there is no similar provision for general tenancies and we recommend that this clause be removed from the bill.

Abandoned goods

Most of us believe it should provide protection for tenants' possessions when boarding house premises are abandoned. The current wording in the bill would allow a landlord to dispose of items worth less than \$500 after 35 days. We recommend new sections 66Y(4)(b) and (4)(c) be changed to place a value of \$100 on goods abandoned by boarding house tenants. We believe \$100 is more realistic as boarding house tenants are rarely in possession of valuable items. We also recommend clarifying the relevant provisions in section 62(2) relating to the consequences of a sale of abandoned goods for general tenancies so that they will also apply to boarding house tenancies.

Boarding house bonds

Submitters expressed different views on bonds for boarding house tenancies. Submitters, including the National Council of Women, supported the limit of one week's rent as a bond. Several submitters, mainly boarding house owners, objected to not being able to take up to four weeks rent as a bond to protect themselves against damage caused by a tenant. Several submissions requested a bond payment of two weeks. Federated Farmers' submission recommended that the bond payment should be the same as for a general tenancy.

Most of us recommend that the bill be amended to provide that, as for general tenancies, bonds may not exceed four weeks' rent. Where bonds of more than one week's rent are taken, lodgement with Tenancy Services will be mandatory. Bonds of one week's rent or less need not be lodged, but a receipt must be given.

Bond refunds process

We recommend clause 10 be amended to clarify that application to the Tenancy Tribunal for a bond refund after two months is not mandatory if the two parties have reached agreement on the way the bond is to be refunded.

Address for service of notice of hearing

The bill provides for the Tenancy Tribunal to accept a notice of hearing as served if it has been sent to a tenant at a tenancy address or other address for service within two months of the tenancy ending. If the application is made after two months of the tenancy ending, Tenancy Services is required to send it personally to ensure effective service. The Principal Tenancy Adjudicator submitted that the proposed amendment suffered from a number of flaws, principally problems with the delivery of the notice to the tenant. Tenancy Services submitted that the requirement to serve personally on a tenant where the landlord makes the application after two months would place an onerous burden on staff.

We recommend amending sections 91A(1)(a) and 91A(2) to provide for the posting of a notice of hearing to a 'contact address' that is provided to the landlord within two months prior to the filing of the application.

Centralised processing of Tenancy Tribunal applications

The Principal Tenancy Adjudicator recommended that more flexibility is needed in filing Tenancy Tribunal applications, so that applications can be received at an office other than the local office. With the increasing computerisation of tribunal administration, it could be more efficient to create central or regional processing centres for applications. We recommend an amendment to section 86 to enable the Tribunal to receive applications at a place designated in the prescribed form.

Retirement age of Tenancy Tribunal adjudicators

We recommend deleting sections 67(4) and 68(2) of the Act, which refers to the age of retirement from office of Tenancy Tribunal adjudicators. This will ensure consistency with the Human Rights Act 1993.

Minority View—ACT New Zealand, New Zealand National and New Zealand First

ACT New Zealand, New Zealand National and New Zealand First oppose the Government's Residential Tenancies Amendment Bill, a bill designed to bring boarding house operators under the auspices of the Residential Tenancies Act and to make changes to the Act in relation to general tenancies.

The committee was warned that extending the Act to include boarding houses will severely compromise the ability of boarding house operators to run their businesses. A number of submitters indicated that they would convert their establishments into flats if the law was changed. If this occurs, the Government may well find that it has orchestrated a shortage of housing for many disadvantaged people who frequent boarding houses.

Operators also warned that the passing of the bill would result in greater scrutiny of potential tenants, severely disadvantaging those with the greatest difficulties, problems and needs.

There are further concerns that the 'loose' definition of a 'boarding house' may potentially capture the entire backpacking industry, a consequence that is clearly not intended. As a result of these matters, ACT New Zealand, New Zealand National and New Zealand First oppose imposing the Act on boarding houses.

The provisions in the bill which affect general tenancies were opposed by the majority of submitters.

There was a widespread view that passing the 'letting fee' onto landlords would result in rental increases and a reduction in the level of service real estate agents would provided to potential tenants. Overall it was felt that the move would seriously disadvantage tenants. As a result, the ACT New Zealand, New Zealand National and New Zealand First parties vigorously oppose this provision.

The failure to pass waste water charges in areas where waste water is metered on to tenants was seen by submitters to be both inconsistent and unfair. Just as tenants pay for the water they use, so they should be obliged to pay for the waste water they discharge. ACT New Zealand, New Zealand National and New Zealand First oppose the charging of landlords for waste water.

Under the present law, the penalties that can be imposed on landlords who fail to comply can be significant: the Tenancy Tribunal has jurisdiction over disputes of up to \$12,000, prison sentences of up to three months can be imposed, and local authorities have fined landlords over \$40,000 for providing so-called substandard housing. Submitters claimed that the provision in the bill to increase penalties even further by providing for an additional fine of \$3,000 in exemplary damages is unacceptable given the extent of penalties already available. As a result, ACT New Zealand, New Zealand National and New Zealand First oppose the imposition of exemplary damages.

If the Government was serious about improving the Act, it would have used this amendment bill as an opportunity to sort out the two problems that were raised by the majority of submitters—the failure of the Department of Work and Income to supply the addresses of beneficiaries to an officer of the court for the purpose of serving Tenancy Tribunal orders, and the need for beneficiaries to be able to request the department to deduct their rent at source in order to assist them in budgeting. ACT New Zealand, New Zealand National and New Zealand First remain disappointed that the bill failed to address these issues.

It is for the reasons stated above that the ACT New Zealand, New Zealand National and New Zealand First parties oppose the bill.

Conclusion

Labour, the Green party, and the United Future party consider that this bill with our suggested amendments will advance the rights and obligations of boarding house landlords and tenants in a measured productive way.

APPENDIX

We received advice from the Ministry of Housing.

Committee membership

Georgina Beyer (Chairperson)

Dr Muriel Newman (Deputy Chairperson)

Paul Adams

Sue Bradford

Judith Collins

Taito Phillip Field

Dave Hereora

Luamanuvao Winnie Laban

Katherine Rich

Barbara Stewart

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (majority)

Subject to this Act,

Text struck out by a majority

Struck out (unanimous)

Subject to this Act,

Text struck out unanimously

New (majority)

Subject to this Act,

Text inserted by a majority

<Subject to this Act,>

Words struck out by a majority

<Subject to this Act,>

Words inserted by a majority

Hon Mark Gosche

Residential Tenancies Amendment Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Residential Tenancies Amendment Act **2001**.
- (2) In this Act, the Residential Tenancies Act 1986¹ is called "the principal Act".

¹ 1986 No 120

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Part 1 Preliminary provisions

2 Commencement

This Act comes into force on **1 August** ~~2002~~ 2003.

3 Purpose

The purpose of this Act is to—

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- (a) provide for boarding house tenancies and, in particular, to give the Tenancy Tribunal jurisdiction to deal with disputes by landlords and tenants of boarding houses; and
- (b) make miscellaneous amendments to the principal Act.

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Part 2 Amendments to principal Act

Amendments to Parts I and II

4 Interpretation

- (1) Section 2(1) of the principal Act is amended by inserting, after the definition of **bailiff**, the following definitions: 5
“boarding house, boarding house tenancy, boarding house tenancy agreement, and boarding room each have the meanings given to them in **section 66B**”.
- (2) Section 2(1) of the principal Act is amended by inserting, after the definition of **Deputy Principal Tenancy Adjudicator**, the following definition: 10
“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” 15
- (3) Section 2(1) of the principal Act is amended by inserting in the definition of **facilities**, after the words “tenancy agreement”, the words “(other than a boarding house tenancy agreement)” 20
- (4) Section 2(1) of the principal Act is amended by omitting from the definition of **possession order** the words “or section 65 of this Act”, and substituting the words “, section 65, or **section 66Z**”.
- (5) Section 2(1) of the principal Act is amended by omitting from the definition of **premises** the word “include”, and substituting the words “includes (other than in relation to a boarding house tenancy, in which case the definition in **section 66B** applies)” 25

Struck out (majority)

- (6) Section 2(1) of the principal Act is amended by omitting from the definition of **Registrar** the words “; and includes a Deputy Registrar of the District Court who, by virtue of section 14(3) of the District Courts Act 1947, is acting in the place of the Registrar” 30

5 New section 4 substituted

The principal Act is amended by repealing section 4, and substituting the following section:

“4 Act generally to apply to all residential tenancies

This Act applies to every tenancy for residential purposes except as specifically provided otherwise in this Act.”

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6 Act excluded in certain cases**New (majority)**

(1AA) Section 5 of the principal Act is amended by inserting, after paragraph (d), the following paragraph:

“(da) where the premises constitute part of a hostel or home providing residential social rehabilitation services or programmes:”.

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(1AB) Section 5(g) of the principal Act is repealed.

(1) Section 5 of the principal Act is amended by repealing paragraph (h), and substituting the following paragraph:

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Struck out (majority)

“(h) where the premises provide hostel accommodation (as opposed to self-contained accommodation) primarily for use by students of a particular school, university, or other education provider:”.

New (majority)

“(h) where the premises constitute part of any hostel or hall of residence operated by a state school (as defined in section 2(1) of the Education Act 1989) or an institution (as defined in section 159(1) of that Act) for the accommodation of students at any state school or institution:”.

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(2) Section 5 of the principal Act is amended by repealing paragraphs (k) and (l), and substituting the following paragraph:

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- “(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:”
- (3) Section 5(n) of the principal Act is amended by inserting, after the word “premises”, the words “, not being a boarding house,”. 5
- 7 Exceptions to requirements relating to tenancy agreements**
- Section 13D of the principal Act is amended by omitting the words “of this Act”, and substituting the words “(and, in the case of a boarding house tenancy, **section 66C**)”.
- 8 Change of name or address**
- Section 16 of the principal Act is amended by adding the following subsection: 15
- “(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.”
- 9 Requiring key money prohibited**
- (1) Section 17(4) of the principal Act is amended by repealing paragraph (c). 20
- (2) Section 17 of the principal Act is amended by adding the following subsection:
- “(5) No landlord or real estate agent may require a tenant to pay a fee or other charge for services rendered by any solicitor or real estate agent relating to the tenancy.” 25

New (majority)

- 9B Duties of landlord on receipt of bond**
- Section 19 of the principal Act is amended by inserting, after subsection (1), the following subsection:
- “(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.” 30

Struck out (unanimous)**10 New sections 22 to 22C substituted**

(1) Section 22 of the principal Act is repealed, and the following sections substituted:

“22 Claims against bonds made within 2 months of termination of tenancy

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“(1) Any landlord or tenant may apply to the chief executive for payment of bond money out of the Residential Tenancies Trust Account if the application is made—

“(a) within 2 months of the termination of the tenancy to which the bond relates; and

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“(b) in the prescribed form.

“(2) When the chief executive receives an application that complies with **subsection (1)**, he or she must pay the bond in accordance with the terms of the application if—

“(a) the application is made by one party with the agreement of the other; or

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“(b) the application is made by one party in favour of the other.

“(3) In any other case, the chief executive must, on receiving an application that complies with **subsection (1)**, notify the other party that an application has been made, and invite the party to indicate, within 10 working days after being notified, whether or not he or she wishes to contest the application.

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

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“(5) If the other party agrees to the application, the chief executive must pay the money in accordance with the terms of the application.

“(6) If the other party does not agree to the application, or indicates that he or she wishes to contest it, the chief executive must advise both the applicant and the other party that there appears to be a dispute, and must advise both parties how to apply to the Tribunal for an order under **section 22B**.

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“(7) If the chief executive does not receive from the other party, within the time allowed and in the manner required, an indication of whether or not the other party wishes to contest the application, the chief executive must either—

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Struck out (unanimous)

- “(a) pay the money in accordance with the terms of the application; or
- “(b) decline to make a decision, and advise the parties how to apply to the Tribunal for an order under **section 22B**.

- “**22A Claims against bonds made more than 2 months after termination of tenancy** 5
 After the date that is 2 months after the termination of a tenancy, a person who wishes to claim against a bond given under that tenancy must apply to the Tribunal for an order under **section 22B**. 10
- “**22B Order by Tribunal in respect of bonds**
- “(1) The Tribunal may, on application to it by any person, make an order determining who a particular bond is payable to, or (if applicable) what proportion of a bond is payable to whom.
 - “(2) The chief executive must pay bond money out of the Residential Tenancies Trust Account in accordance with any order of the Tribunal made under this section. 15
- “**22C Chief executive must take steps to refund bonds**
- “(1) The chief executive must take steps to refund a bond held by the chief executive if— 20
 - “(a) the chief executive believes on reasonable grounds that the tenancy to which the bond relates has terminated; and
 - “(b) no claim is made for the bond within 2 months of the termination. 25
 - “(2) The steps that the chief executive takes under **subsection (1)** may include publishing—
 - “(a) the name of the tenant in whose name the bond is held; and
 - “(b) the amount, or approximate amount, of the bond; and 30
 - “(c) the location of the tenancy to which the bond relates.
 - “(3) For the avoidance of doubt, this section applies to all bond money held by the chief executive, whenever it is received.”
 - (2) Section 11 of the Residential Tenancies Amendment Act 1996 is consequentially repealed. 35

New (majority)

10 New sections 22 to 22C substituted

(1) The principal Act is amended by repealing section 22, and substituting the following sections:

“22 Application for payment of bond when there is no dispute

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“(1) This section applies to an application made at any time by a landlord or a tenant for payment of a bond, or part of a bond, where the application is made—

“(a) with the agreement of the other party; or

“(b) in favour of the other party.

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“(2) If the chief executive receives an application, in the prescribed form, to which this section applies, the chief executive must pay the bond, or part of it, in accordance with the terms of the application, from the Residential Tenancies Trust Account.

“22A Application for payment of bond when there is no agreement

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“(1) This section applies to an application for payment of a bond, or part of a bond, when there is no agreement between the parties about the payment and the application is made—

“(a) by a tenant at any time; or

“(b) by a landlord within 2 months of the termination of the relevant tenancy.

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“(2) On receiving an application, in the prescribed form, to which this section applies, the chief executive must notify the other party that an application has been made, and invite the party to indicate, within 10 working days after being notified, whether or not he or she wishes to contest the application.

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

“(4) If the other party indicates that he or she wishes to contest the application, the chief executive must advise both the applicant and the other party—

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“(a) that there appears to be a dispute; and

“(b) how to apply to the Tribunal for a determination.

“(5) If the other party does not respond to the invitation to indicate whether or not he or she wishes to contest the application, the chief executive must—

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New (majority)

- “(a) pay the bond in accordance with the application; or
“(b) decline to make a decision and advise the parties how to apply to the Tribunal for a determination.
- “(6) If the other party agrees to the application, the chief executive must pay the bond, in accordance with the terms of the application, from the Residential Tenancies Trust Account. 5
- “22B Applications to Tribunal**
- “(1) A landlord who, more than 2 months after the termination of a tenancy, seeks payment of a bond without the agreement of the tenant, must apply to the Tribunal for an order determining to whom the bond, or any part of it, is to be paid. 10
- “(2) 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. 15
- “(3) 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, from the Residential Tenancies Trust Account. 20
- “22C Chief executive must take steps to refund bonds**
- “(1) The chief executive must take steps to refund a bond held by the chief executive if—
- “(a) the chief executive believes on reasonable grounds that the tenancy to which the bond relates has terminated; and 25
- “(b) no claim is made for the bond within 2 months of the termination.
- “(2) The steps that the chief executive takes under **subsection (1)** may include publishing— 30
- “(a) the name of the tenant in whose name the bond is held; and
- “(b) the amount, or approximate amount, of the bond; and
- “(c) the location of the tenancy to which the bond relates.

New (majority)

- “(3) For the avoidance of doubt, this section applies to all bond money held by the chief executive, whenever it is received.”
- (2) Section 11 of the Residential Tenancies Amendment Act 1996 is consequentially repealed.

11 Rent increases

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- (1) Section 24(1)(c) of the principal Act is amended by inserting, after the words “not less than 60 days”, the words “(or, in the case of a boarding house tenancy, not less than 28 days)”.
- (2) Section 24(1)(f)(i) of the principal Act is amended by inserting, after the words “60 days”, the words “(or, in the case of a boarding house tenancy, 28 days)”.

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New (majority)**11A Tenant’s goods not to be seized**

Section 33(4)(a) of the principal Act is amended by inserting, after the expression “62(1)”, the words “or **section 66Y**”.

12 Outgoings

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- (1) Section 39(2)(b) of the principal Act is amended by inserting, after the words “water charges”, the words “(other than fixed charges, and charges relating to waste water)”.
- (2) Section 39(2) of the principal Act is amended by inserting, after paragraph (b), the following paragraph:

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“(ba) water charges for tank water supplied to the premises, but only for water used by the tenant that the Tribunal, on application by the landlord, declares to be in excess of the amount of water that a reasonable tenant in similar circumstances would have used:”.

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13 Tenant’s responsibilities

Section 40 of the principal Act is amended by inserting, after subsection (2), the following subsection:

- “(2A) The tenant’s liability for any damage to the premises is not affected by the fact that the landlord has, or may have, insurance cover for damage to the premises.”

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14 Landlord’s responsibilities

Section 45 of the principal Act is amended by inserting, after subsection (4), the following subsection:

“(4A) Failure by a landlord to comply with any of paragraphs (a), (b), or (c) of subsection (1) is an unlawful act.”

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New (majority)**14A New section 53A inserted**

The principal Act is amended by inserting, after section 53, the following section:

“53A Special provisions for notice terminating certain student tenancies

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“(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—

“(a) being a student; or

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

“(2) The landlord of a student tenancy, and 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.

“(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.”

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15 Tribunal may declare retaliatory notice of no effect

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Section 54(1) of the principal Act is amended by omitting the words “of this Act”, and substituting the words “(or, in the case of a boarding house tenancy, **section 66U**)”.

*New Part 2A inserted***16 New Part 2A inserted**

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The principal Act is amended by inserting, after section 66, the following Part:

“Part 2A
“Boarding house tenancies

“Application

“66A Application of Part

- “(1) This Part sets out special provisions that apply only to boarding house tenancies. 5
- “(2) The following provisions of this Act do not apply to boarding house tenancies <unless otherwise specifically applied>:
- “(a) section 7 (relating to short fixed-term tenancies):
- “(b) section 9(1) and (2) (relating to transitional provisions): 10

Struck out (majority)

“(c) sections 18 to **22** (relating to bonds):

“(d) sections 36 to 42 and 44 to 49 (relating to the rights and obligations of tenants and landlords):

“(e) <sections 51, 53, and> <sections 51 and> 55 to 57 (relating to the termination of tenancies): 15

“(f) sections 61 and 62 (relating to the abandonment of premises and goods):

“(g) section 64 (relating to possession orders).

- “(3) When applying other provisions of this Act to boarding house tenancies, terms that are defined in **section 66B** have the meaning given by that section. 20

“66B Interpretation in this Part

In this Part, unless the context otherwise requires,—

“**boarding house** means residential premises—

“(a) containing 1 or more boarding rooms along with facilities for communal use by the tenants of the boarding house; and 25

“(b) occupied, or intended by the landlord to be occupied, by at least <4> <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 occupy particular sleeping quarters in the boarding 35

house, and has the right to the shared use of the facilities of the boarding house

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

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“**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

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

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“(a) toilet and bathroom facilities:

“(b) cooking facilities:

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

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“(d) laundry facilities:

“(e) lifts and stairways:

“(f) rubbish storage and rubbish disposal facilities:

“(g) appliances for heating or cooling premises:

“(h) communication facilities:

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“(i) lawns, gardens, and outhouses:

“(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.

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“*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:

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“(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<, or his or her agent,> is reasonably contactable by the tenant at any time:

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

- “(d) a statement of 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: 10
- “(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:

New (majority)

- “(h) a description of the fire evacuation procedures that apply to the premises. 15

- “(2) A boarding house tenancy agreement may, in addition, provide for the tenant to supply the name and contact details of a contact person (who may be a natural person or an organisation).

Struck out (majority)

- “(3) Section 13D provides some exceptions to the requirements for boarding house tenancy agreements. 20

Compare: Residential Tenancies Act 1997 s 125 (Victoria)

Struck out (majority)

“66D **Bonds**

- “(1) The landlord of a boarding house may not require payment of more than 1 week’s rent as bond. 25
- “(2) If the tenant pays the landlord a bond, the landlord must immediately give the tenant a receipt for the bond that complies with section 19(1)(a).
- “(3) Requiring payment of a bond of more than 1 week’s rent, or failing to give the tenant a receipt as required by **subsection (2)**, is an unlawful act. 30

Struck out (majority)

- “(4) The landlord is not required to lodge any bond with the chief executive, but, if the landlord chooses to do so, then sections 19 and **22 to 22B** apply (despite **section 66A(2)(c)**).
- “(5) If a landlord who has received a bond has not lodged it with the chief executive, he or she must refund the bond to the tenant when the tenancy terminates in accordance with **section 66W**.

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New (majority)**“66D Bonds of 1 week’s rent or less**

- “(1) If 1 week’s rent or less is received as bond under a boarding house tenancy,—
- “(a) the bond need not be lodged with the chief executive, and sections 19 to **22B** 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
- “(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—
- “(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.
- “(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.

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“66E Outgoings

- “(1) Outgoings payable in respect of the premises are, as between the landlord and tenant, payable by the landlord.
- “(2) In this section, **outgoings** means—
- “(a) rates; and

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- “(b) insurance premiums; and
 - “(c) water charges (whether relating to the supply or discharge, or both, of water) (other than any payable by the tenant under **subsection (3)**); and
 - “(d) gas and electricity charges (other than any payable by the tenant under **subsection (3)**); and 5
 - “(e) fixed telephone charges (other than any payable by the tenant under **subsection (3)**).
- “(3) Despite **subsection (1)**, charges for the following that are incurred by a tenant during the tenancy are payable by the tenant, in addition to the rent payable: 10
- “(a) charges for electricity or gas supplied to the tenant’s boarding room, but only if the tenancy agreement gives the tenant exclusive occupation of the room and the supply is separately metered for that room: 15
 - “(b) charges for water (other than fixed charges and charges relating to waste water) supplied to the tenant’s boarding room, but only if the tenancy agreement gives the tenant exclusive occupation of the room and the supply is separately metered for that room: 20
 - “(c) all charges in respect of any telephone connected to the tenant’s boarding room, but only if the tenancy agreement gives the tenant exclusive occupation of the room: 25
 - “(d) services supplied by the landlord to the tenant under the tenancy agreement, except to the extent that the tenancy agreement provides that payment for specified services is included in the rent. 25
- “(4) 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 (Victoria)

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

A boarding house tenancy is not assignable by a tenant.

Compare: Residential Tenancies Act 1997 s 93 (Victoria)

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*“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 subsection (3)** in circumstances that amount to harassment of a tenant is an unlawful act.

Compare: Residential Tenancies Act 1997 ss 113, 122 (Victoria)

“66H Landlord’s obligations at start of tenancy 15

- “(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)* the bed that the tenant is to occupy is fit for its purpose and in a reasonable state of cleanliness; and
- “*(d)* there is no legal impediment to the tenant’s occupation of the room. 30

Compare: Residential Tenancies Act 1997 s 109 (Victoria)

“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
- “(c) comply with all requirements in respect of buildings, health, and safety under any enactment so far as they apply to the premises; and 5
- “(d) ensure that there are sufficient locks or similar devices to ensure the security of the premises; and
- “(e) ensure that the tenant has access at all times to his or her room and to toilet and bathroom facilities on the premises; and 10
- “(f) ensure that the tenant has access at all reasonable hours to the other facilities on the premises; and
- “(g) ensure that *<a copy>* *<copies>* of the house rules *<is>* *<and fire evacuation procedures are>* on display in the premises at all times; and 15
- “(h) take all reasonable steps to ensure that the house rules are observed, and to enforce them in a fair and consistent manner.
- “(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. 20

New (majority)

“(2A) The obligations in **subsection (1)** are in addition to the obligation in **section 66G(2)**.

- “(3) Failure by the landlord to comply with any of **paragraphs (a) to (c) of subsection (1)** is an unlawful act. 25

Compare: Residential Tenancies Act 1997 ss 120–124, 127(2) (Victoria)

“66J Other obligations of landlord

- “(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. 30
- “(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 35

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

“66K **Obligations of tenant**

- “(1) The tenant of a boarding house must—
- “(a) pay the rent *<as and>* when it is due *<and payable>* under the tenancy agreement; and
 - “(b) ensure that the tenant’s room is occupied principally for residential purposes; and 10
 - “(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
 - “(d) notify the landlord, as soon as possible after discovery, of any damage to the premises or of the need for any repairs; and 15
 - “(e) observe the house rules; and
 - “(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. 20
- “(2) The tenant of a boarding house must not—
- “(a) intentionally or carelessly damage, or permit any other person to damage, the premises; or
 - “(b) use the tenant’s boarding room, or permit the room to be used, for an unlawful purpose; or 25
 - “(c) cause or permit any interference with the reasonable peace, comfort, or privacy of any person residing in the neighbourhood; or
 - “(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 30
 - “(e) alter, add to, or remove from the premises any lock or similar device; or
 - “(f) keep a pet on the premises without the permission of the landlord. 35

New (majority)

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| <p>“(3) The obligations in this section are in addition to the obligation in section 66G(3).</p> |
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“66L Tenant’s liability for damage

- “(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. 5
- “(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. 10
- “(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. 15
- “(4) A tenant’s liability for damage to the premises is not affected by the fact that the landlord has, or may have, insurance cover for damage to the premises.

“66M Tenant’s obligations at end of tenancy

- On the termination of a tenancy, the tenant of a boarding house must— 20
- “(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
- “(e) leave in or at the premises all other chattels provided by the landlord for the use of tenants of the boarding house. 30

“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 the use and enjoyment of the premises.
- “(2) No house rule may—
- “(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— 10
- “(i) require or permit any form of discrimination in contravention of the Human Rights Act 1993; or
- “(ii) purport to permit anything that would breach the Privacy Act 1993. 15
- “(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’ written notice of the new house rule.
- Compare: Residential Tenancies Act 1997 ss 126, 127 (Victoria) 20
- “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)**.
- “(2) **Subsection (1)** applies even if, when the tenancy was entered into, the tenant had notice of the relevant house rule. 25
- “(3) A tenant may apply to the Tribunal for an order requiring a landlord to apply a house rule in a particular manner.
- “(4) A landlord commits an unlawful act if he or she, in breach of an order of the Tribunal made under this section,— 30
- “(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.
- Compare: Residential Tenancies Act 1997 s 128 (Victoria) 35

*“Landlord’s right of entry***“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 may not use the facilities of the boarding house for his or her own domestic purposes unless the landlord resides at the boarding house. 5

“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: 10

“(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:

Struck out (majority)

“(b) there is an emergency and immediate entry is necessary to save life or property: 15

New (majority)

“(b) the landlord believes on reasonable grounds that there is an emergency and that immediate entry is necessary to save life or property:

“(ba) 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: 20

“(c) 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: 25

“(d) the Tribunal has ordered that the landlord may enter the room.

“(2) The landlord may also enter the room of a tenant if the landlord— 30

“(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
- “(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(2)**); and 5
- “(c) enters the room between 8 am and 6 pm.
- “(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 10
- “(c) must not interfere with the tenant’s property unless it is necessary for the purpose of the entry.
- Compare: Residential Tenancies Act 1997 ss 136, 138 (Victoria)
- “66S Notice of entry**
- “(1) A notice of entry must— 15
- “(a) be in writing; and
- “(b) state the purpose of the entry, which must be one of the purposes listed in **subsection (2)**; and
- “(c) identify the person or persons who will enter the room; and 20
- “(d) state the date on which entry will be made and the approximate time of entry.
- “(2) The purposes for which a landlord *<(or his or her agent)>* may enter a boarding room under a notice of entry are—
- “(a) to show the room to a prospective tenant: 25
- “(b) to show the room to a prospective buyer or lender, or a registered valuer engaged in preparing a report, if the boarding house is to be sold or used as security:
- “(c) entry to the room is necessary to enable the landlord to fulfil his or her obligations under this Act: 30
- “(d) 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:
- “(e) the landlord wishes to confirm whether or not a tenant of the room has abandoned the tenancy (*see section 66X*): 35
- “(f) the landlord wishes to inspect the room and no entry for that purpose has been made within the last 4 weeks.
- “(3) A notice of entry must be given to a tenant by—
- “(a) giving it to the tenant in person; or
- “(b) putting it on the door of the tenant’s room; or 40

“(c) putting it inside the tenant’s room (for example, by sliding it under the door).

Compare: Residential Tenancies Act 1997 ss 137, 139 (Victoria)

“66T Consequence of abuse, or refusal, of right of entry

- “(1) The following are unlawful acts: 5
- “(a) entry into a tenant’s room by a landlord otherwise than in accordance with **section 66R**: 10
- “(b) the use *<or threat of force>* by the landlord *<(or his or her agent) of force, or the threat of force,>* to enter or attempt to enter a tenant’s room (other than in an emergency as provided for in **section 66R(1)(b) <or (ba)>**): 10
- “(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**. 15
- “(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 \$500. 20
- “(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. 25
- “(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.

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

“Termination 30

“66U Termination of tenancy by landlord

- “(1) The landlord of a boarding house may terminate a boarding house tenancy—
- “(a) immediately, if the tenant is, or has been, deliberately or recklessly causing serious damage to the premises, putting people or property in danger, or causing serious disruption to other residents; or 35
- “(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
- “(iii) the landlord believes, having complied with **section 66X**, that the tenant has abandoned the room; or

Struck out (majority)

- “(c) on 14 days’ notice, if reconstruction, repairs, or renovation of the premises is required and no other boarding room is available for the tenant; or

New (majority)

- “(c) on 14 days’ notice if the tenancy is also a service tenancy, in which case section 53 applies; or

- “(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
 - “(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
 - “(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.
- “(4) For the avoidance of 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.

New (majority)

“(3) If a boarding house tenancy is also a service tenancy, the requirement in section 53(1) that a tenant gives not less than 14 days’ notice does not apply.

Struck out (majority)

“66W Return of bond on termination

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“(1) Unless the landlord has lodged any bond with the chief executive (in which case sections 19 to **22C** apply), the landlord must refund any bond paid by the tenant to the tenant when the tenancy terminates.

“(2) Despite **subsection (1)**, the landlord may retain out of a bond— 10

“(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. 15

“(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 requiring the landlord to refund all or a specified part of the bond. 20

“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— 25

“(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 30

“(b) must make all reasonable efforts to contact the contact person (if any) identified in the tenant’s tenancy agreement.

- “(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. 5
- “(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. 10

“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 15
- “(b) must take possession of all the tenant’s other goods and take all reasonable steps to ensure that they are stored securely; and 20
- “(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. 25
- “(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. 30
- “(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.
- “(4) If, after 35 days, the goods remain unclaimed, the landlord—
- “(a) must hand any personal papers belonging to the tenant to *<the police>* <a member of the police at the nearest police station, who must give a receipt for them>; and 35
- “(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 <\$500>
<\$100> or more; and
- “(c) may dispose of any item of the tenant’s that <the landlord believes on reasonable grounds> is worth less than <\$500> <\$100>.”

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New (majority)

“(4A) 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).

“(5) Disposing of a tenant’s goods otherwise than in accordance with this section is an unlawful act.”

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“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

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“(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.”

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“Transitional arrangements

Struck out (majority)

“66ZA Application of Act to existing boarding house tenancies

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“(1) After the date on which the Residential Tenancies Amendment Act **2001** comes into force, this Act applies to every boarding house tenancy entered into and still subsisting immediately before that date, except that sections 13, 13A, and **66C** of this Act do not apply to such tenancies.

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“(2) Paragraphs (a) to (e) of section 9(3) apply (with all necessary modifications) in respect of every boarding house tenancy

Struck out (majority)

entered into and still subsisting immediately before the date on which the Residential Tenancies Amendment Act 2001 comes into force.

New (majority)**“66ZA Application of Act to old boarding house tenancies**

- “(1) After the date on which the **Residential Tenancies Amendment Act 2001** comes into force, this Act applies to every boarding house tenancy entered into and still subsisting immediately before that date (**old tenancies**), except as provided in **subsections (2) and (3)**. 5
- “(2) With respect to every boarding house tenancy bond under an old tenancy,— 10
- “(a) in the case of a bond of more than 1 week’s rent, section 19(1) must be complied with within 23 working days of the commencement of the **Residential Tenancies Amendment Act 2001**; and 15
- “(b) in the case of a bond of 1 week’s rent or less, **section 66D(1)(b)** must be complied with within 5 working days of the commencement of the **Residential Tenancies Amendment Act 2001**. 15
- “(3) Sections 13, 13A, and **66C** (which relate to the form and content of boarding house tenancy agreements) do not apply to old tenancies. 20
- “(4) Section 9(2) and (3) (which are transitional provisions) apply to old tenancies as if the references in those provisions to the commencement of this Act were references to the commencement of the **Residential Tenancies Amendment Act 2001**.” 25

*Amendments to Parts III, IV, and V***New (majority)****16A Constitution of Tribunal**

Section 67(4) of the principal Act (which imposes an age restriction on appointees to the Tribunal) is repealed. 30

New (majority)

16B Term of office of Tenancy Adjudicators

Section 68(2) of the principal Act (which requires Tenancy Adjudicators to retire at a certain age) is repealed.

17 Jurisdiction of Tribunal

- (1) Section 77(2) of the principal Act is amended by inserting, 5
after paragraph (a), the following paragraph:
“(aa) 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**:”.
- (2) Section 77(2) of the principal Act is amended by inserting, 10
after paragraph (m), the following paragraphs:
“(ma) to make an order declaring <that> a house rule of a boarding house <is> unlawful, or requiring a landlord to apply a house rule in a particular manner:
“(mb) to order the landlord to refrain from exercising the 15
power under **section 66R(2)** to enter the boarding room of a tenant under a boarding house tenancy:
“(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 20
worth <\$500> <\$100> or more and has not been
claimed within 35 days of the termination of the
tenancy:”.

New (majority)

17A New section 86 substituted

The principal Act is amended by repealing section 86, and 25
substituting the following section:

“86 Filing of applications

- “(1) Proceedings before the Tribunal are commenced by filing an
application in the prescribed form, along with any prescribed
fee, at an appropriate office of the Tribunal. 30

New (majority)

- “(2) An appropriate office for filing an application is—
- “(a) the office of the Tribunal that is closest by the most practicable route to the premises that are the subject of the application; and
 - “(b) any other office identified on the prescribed form as an alternate office at which applications may be filed.”

18 New sections 91A and 91B inserted

The principal Act is amended inserting, after section 91, the following sections:

“91A Service on tenants following application 10

- “(1) If a landlord files an application within 2 months ~~<of>~~ <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— 15
- “(a) it is posted to the tenant at the tenant’s address for service ~~<given 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 20
 - “(b) it is delivered to ~~<that>~~ <the> address for service ~~<or to that contact address>~~ and either placed in the mailbox or attached to the door in a prominent position; or
 - “(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 25
 - “(e) it is sent by facsimile to the number specified in the tenancy agreement, or otherwise stated in writing by the tenant, as the facsimile number by which the tenant will accept service. 30
- “(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— 35
- “(a) personally; or

New (majority)

“(ab) 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

“(b) 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

“(c) 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.

“(3) This section overrides section 136(1) and (2).

“91B Hearing may proceed even if respondent not served

If a notice or other document that is required to be served on a respondent 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—

“(a) all reasonable efforts have been made to serve the respondent as required by this Act; and

“(b) the failure to serve the respondent as required is not due to any fault or unreasonable delay by the applicant.”

19 Non-attendance at hearing after due notice

Section 92 of the principal Act is amended by adding, as subsection (2), the following subsection:

“(2) Where subsection (1) applies and neither the applicant nor the respondent 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.”

20 Enforcement of work orders

Section 108(2) of the principal Act is amended by inserting, after paragraph (c), the following paragraph:

“(ca) make an order requiring the party against whom the work order was made to pay a sum in the nature of exemplary damages, up to a maximum of \$3,000, to the person in whose favour the work order was made; or”.

21 Unlawful acts

- (1) Section 109(4)(a) of the principal Act is amended by omitting the words “of this Act”, and substituting the words “, **section 45(4A), or section 66I(3)**”.
- (2) Section 109(4)(b) of the principal Act is amended by omitting the words “or section 38(3) of this Act”, and substituting the words “, section 38(3), **section 66G(4), section 66P(4), or section 66Y(5)**”.
- (3) Section 109(4)(c) of the principal Act is amended by inserting, after the expression “section 48(4)”, the expression “**section 66D(3), section 66T(1),**”.

22 Residential Tenancies Trust Account

- (1) Section 127(4) of the principal Act is amended by omitting the words “section 22 of this Act”, and substituting the words “**sections 22<, 22A,> and 22B**”.
- (2) Section 127 of the principal Act is amended by inserting, after subsection (7), the following subsection:
- “(7A) All money paid into the Residential Tenancies Trust Account as bond money and that is not claimed within 6 years of the end of the tenancy to which the bond relates belongs to the Crown and must be paid into a Crown Bank Account. <However, during the first year after the commencement of the Residential Tenancies Amendment Act 2001, payment of money into a Crown Bank Account may be delayed to enable the chief executive to exercise the powers under section 22C.>”

23 Service of documents

- Section 136 of the principal Act is amended by inserting, after subsection (2), the following subsection:
- “(2A) **Section 91A** overrides subsections (1) and (2) in relation to service on tenants in the circumstances set out in that section.”

Part 3 Transitional provisions

24 Bond refund applications

If an application for refund of a bond under section 22 of the principal Act (as it was before its amendment by this Act) is received by the chief executive and appears to have been

posted or lodged before the date on which this Act commences, then the application must be dealt with as if this Act had not been passed.

25 Proceedings before Tribunal

- (1) Every application received by the Tribunal under section 86 of the principal Act before the commencement of this Act must be dealt with as if this Act had not been passed. 5
- (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. 10
- (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. 15

Legislative history

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| 18 December 2001 | Introduction (Bill 188–1) |
| 2 May 2002 | First reading and referral to Social Services Committee |
