



ANALYSIS

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|---|--|
| <p>Title</p> <ol style="list-style-type: none"> 1. Short Title and commencement 2. Interpretation <p style="text-align: center;">PART I</p> <p style="text-align: center;">APPLICATION OF ACT</p> <ol style="list-style-type: none"> 3. Act to bind the Crown 4. Act generally to apply to all residential tenancies 5. Act excluded in certain cases 6. Long fixed-term tenancies 7. Short fixed-term tenancies 8. Parties to excluded tenancies may agree that Act shall apply 9. Existing tenancies 10. Onus of proof 11. Act generally to apply despite contrary provisions <p style="text-align: center;">PART II</p> <p style="text-align: center;">TENANCY AGREEMENTS</p> <p style="text-align: center;"><i>Preliminary Matters</i></p> <ol style="list-style-type: none"> 12. Discrimination on certain grounds prohibited 13. Form of tenancy agreements 14. Minors 15. Landlord's name, address, and occupation 16. Tenant's name, address, and occupation <p style="text-align: center;"><i>Key Money, Bonds, and Rents</i></p> <ol style="list-style-type: none"> 17. Requiring key money prohibited 18. Bonds to be no more than 4 weeks' rent 19. Duties of landlord on receipt of bond 20. Duties of Corporation 21. Tenant may pay bond direct to Corporation with landlord's consent 22. Claims against bonds 23. Rent in advance 24. Rent increases 25. Market rent 26. Duration of order determining market rent | <ol style="list-style-type: none"> 27. Rent in excess of market rent irrecoverable 28. Increase of rent where premises or facilities substantially improved 29. Receipts for rent 30. Landlord to keep records 31. Apportionment of rent 32. Accelerated rent or damages prohibited 33. Tenant's goods not to be seized in payment of rent 34. Transitional provision relating to bonds 35. Transitional provisions relating to fair rents and equitable rents <p style="text-align: center;"><i>Rights and Obligations of Parties</i></p> <ol style="list-style-type: none"> 36. Legal impediments to occupation 37. Vacant possession 38. Quiet enjoyment 39. Outgoings 40. Tenant's responsibilities 41. Tenant's responsibility for actions of others 42. Tenant's fixtures 43. Disposition of landlord's interest 44. Assignment and subletting by tenant 45. Landlord's responsibilities 46. Locks 47. Landlord to give notice to tenant of intention to sell 48. Landlord's right of entry 49. Mitigation of damage or loss <p style="text-align: center;"><i>Termination of Tenancies and Recovery of Possession</i></p> <ol style="list-style-type: none"> 50. Circumstances in which tenancies are terminated 51. Termination by notice 52. Provision for shorter notice may be made with consent of Tribunal 53. Special provisions for notice terminating service tenancies 54. Tribunal may declare retaliatory notice of no effect 55. Termination on non-payment of rent, damage, or assault |
|---|--|

- 56. Termination for other breach
- 57. Effect on subtenancy of termination of head tenancy
- 58. Mortgagee or other person becoming entitled to possession
- 59. Destruction of premises
- 60. Tenant remaining in possession after termination of tenancy
- 61. Abandonment of premises
- 62. Abandoned goods
- 63. Entry without order of Tribunal prohibited
- 64. Possession orders
- 65. Eviction of squatters
- 66. Transitional provisions relating to protected tenancies

PART III

THE TENANCY TRIBUNAL

Constitution and Administration

- 67. Constitution of Tribunal
- 68. Term of office of Tenancy Adjudicators
- 69. Remuneration of Tenancy Adjudicators
- 70. Tenancy Adjudicators to be protected
- 71. Conduct of Tribunal and stationing of Tenancy Adjudicators
- 72. Registrars
- 73. Seal of Tribunal
- 74. Records of Tribunal
- 75. Offices and Tenancy Officers
- 76. Tenancy Mediators

Jurisdiction

- 77. Jurisdiction of Tribunal
- 78. Orders of Tribunal
- 79. Jurisdiction to make interim orders
- 80. Orders of Tribunal to be final
- 81. Exclusion of Tribunal's jurisdiction prohibited
- 82. Exclusion of other jurisdictions
- 83. Transfer of proceedings to District Court
- 84. Jurisdiction of Tribunal generally exercisable by any Tenancy Adjudicator
- 85. Manner in which jurisdiction is to be exercised

Procedure

- 86. Filing of applications
- 87. Duties of Tenancy Officer on receipt of application
- 88. Functions of Tenancy Mediators
- 89. Statements made in mediation to be subject to privilege
- 90. Tenancy Mediator to observe confidentiality
- 91. Notice of hearing by Tribunal
- 92. Non-attendance at hearing after due notice
- 93. Right of audience
- 94. Minors and persons under disability
- 95. Proceedings usually to be in public
- 96. Further provisions relating to procedure generally
- 97. Evidence
- 98. Witness summons

- 99. Tribunal may require inquiry and report by Tenancy Mediator
- 100. Tenancy Mediator or Tribunal may require valuer's report in certain proceedings
- 101. Protection of persons appearing, etc.
- 102. Costs
- 103. Reference of questions of law to High Court
- 104. Decision of Tribunal
- 105. Rehearings

Enforcement and Offences

- 106. Enforcement of possession orders
- 107. Enforcement of orders other than possession orders and work orders
- 108. Enforcement of work orders
- 109. Unlawful acts
- 110. Failing to answer witness summons
- 111. Giving false evidence
- 112. Contempt

Miscellaneous Provisions

- 113. Tenancy Officers to provide assistance
- 114. Powers of entry of Tenancy Mediators
- 115. Principal Tenancy Adjudicator may issue practice directions
- 116. Rules of procedure

Appeals

- 117. Appeal to District Court
- 118. Powers of District Court Judge on appeal
- 119. Appeal on questions of law to High Court
- 120. Further appeal to Court of Appeal

PART IV

ADMINISTRATION

Functions and Powers of Director-General

- 121. Director-General responsible for administration of Act
- 122. Director-General may delegate powers
- 123. General functions and powers of Director-General
- 124. Director-General may take or defend proceedings on behalf of any party
- 125. Immunities
- 126. Annual report

Residential Tenancies Fund

- 127. Establishment of Fund
- 128. Part A of the Fund
- 129. Part B of the Fund
- 130. Corporation may make money available
- 131. Corporation may borrow
- 132. No execution

PART V

MISCELLANEOUS PROVISIONS

- 133. Tribunal or Director-General may require terms of tenancy agreement
- 134. Waiver by landlord of breach by tenant
- 135. Recovery of money paid by mistake
- 136. Service of documents

<p>137. Prohibited transactions 138. Offences triable summarily 139. Regulations relating to accommodation brokers 140. Regulations relating to other matters 141. First Schedule may be amended by Order in Council 142. Effect on Property Law Act 1952</p>	<p>143. Housing Corporation Act 1974 amended 3A. Corporation to have Tenancy Bond Division 23A. Guarantees and indemnities under Residential Tenancies Act 1986 144. Repeals, revocations, and amendments Schedules</p>
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1986, No. 120

An Act to reform and restate the law relating to residential tenancies, to define the rights and obligations of landlords and tenants of residential properties, to establish a tribunal to determine expeditiously disputes arising between such landlords and tenants, to establish a fund in which bonds payable by such tenants are to be held, and to repeal the Tenancy Act 1955 and the Rent Appeal Act 1973 and their amendments

[17 December 1986]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Residential Tenancies Act 1986.

(2) This Act shall come into force on the 1st day of February 1987.

2. Interpretation—(1) In this Act, unless the context otherwise requires,—

“Accommodation broker” means a person who, in the ordinary course of business, otherwise than as a solicitor or a real estate agent acting on behalf of clients, informs other persons for fee or reward—

(a) Of residential premises that are or may be available for letting; or

(b) Of the names, addresses, or telephone numbers of persons who are or may be the proprietors or occupiers of residential premises that are or may be available for letting; or

(c) Of the names, addresses, or telephone numbers of persons who wish or may wish to become tenants of residential premises:

“Adult” means a person who has attained the age of 18 years, or who is under that age but is or has been married:

“Agent”, in relation to any person who is a landlord or a tenant, means an agent of that person in that

person's capacity as landlord or tenant; and includes an employee of that person in that person's capacity as landlord or tenant:

"Application", in relation to the Tribunal, includes—

(a) An application made jointly by the landlord and the tenant of any premises; and

(b) Any complaint by the landlord against the tenant or by the tenant against the landlord; and

(c) Any claim by the landlord against the tenant or by the tenant against the landlord:

(d) Any complaint by the Director-General alleging a breach of this Act:

(e) Any other application that may be made to the Tribunal by virtue of any of the provisions of this Act or of any regulations made under this Act:

"Bailiff" means a bailiff of a District Court:

"Bond" means any sum of money payable or paid under a tenancy agreement as security for the observance and performance of the tenant's obligations under the agreement and this Act; but does not include any sum payable or paid by way of rent:

"Commercial premises" means premises that are not residential premises:

"Corporation" means the Housing Corporation of New Zealand:

"Deputy Principal Tenancy Adjudicator" means the Deputy Principal Tenancy Adjudicator appointed under section 67 (2) (b) of this Act:

"Director-General" means the Director-General of the Corporation:

"Ethical belief" means the absence of a religious belief whether in respect of a particular religion or religions or all religions:

"Ethnic or national origins" includes nationality and citizenship:

"Facilities", in relation to a tenancy agreement, includes all facilities provided by the landlord for the use and enjoyment of the tenant, otherwise than as part of the premises that are the subject of the agreement, such as the following:

(a) Any land or buildings intended for use for storage space or for the parking of motor vehicles:

(b) Laundry facilities:

(c) Cooking facilities:

(d) Lifts and stairways:

(e) Rubbish storage and rubbish disposal facilities:

(f) Toilet and washing facilities:

(g) Appliances for heating or cooling premises:

(h) Communication facilities:

(i) Recreational areas:

(j) Lawns, gardens, and outhouses:

“Fixed-term tenancy” means a tenancy for a fixed term; but, except as provided in section 7 (3) of this Act, does not include such a tenancy that is terminable by notice:

“The Fund” means the Residential Tenancies Fund established by section 127 of this Act:

“Goods” means goods, baggage, and chattels of any description; and includes animals and plants; and also includes money, documents, and all other things of value:

“Key money” means any sum of money demanded by way of fine, premium, foregift, or otherwise as consideration for the grant, continuance, extension, variation, or renewal of a tenancy agreement, or for consent to the surrender or disposition of the tenant’s interest under a tenancy agreement or to a subletting by the tenant; but does not include any sum payable or paid by way of rent or bond:

“Landlord”, in relation to any residential premises that are the subject of a tenancy agreement, means the grantor of a tenancy of the premises under the agreement; and, where appropriate, includes—

(a) A prospective landlord; and

(b) A former landlord; and

(c) A lawful successor in title of a landlord to the premises; and

(d) The personal representative of a deceased landlord; and

(e) An agent of a landlord:

“Member of the landlord’s family” means any of the following:

(a) The landlord’s spouse:

(b) Any person with whom the landlord has entered into a relationship in the nature of marriage:

(c) Any child of the landlord or of any person referred to in paragraph (a) or paragraph (b) of this definition:

(d) Any other child who is being, or is to be, cared for on a continuous basis by the landlord or any

person referred to in paragraph (a) or paragraph (b) of this definition:

(e) Any parent of the landlord or of any person referred to in paragraph (a) or paragraph (b) of this definition:

(f) Any other person who is related (whether by blood or marriage) to the landlord or to any person referred to in paragraph (a) or paragraph (b) of this definition and is residing, or is to reside, in the landlord's premises in accordance with an arrangement between that person and the landlord of a predominantly domestic or family nature rather than a predominantly commercial nature:

“Minister” means the Minister of Housing:

“Minor” means any person who is not an adult:

“Officer of the Tribunal” means an officer of the Department of Justice, or of the Corporation, who is for the time being acting in the service of the Tribunal; and includes a Tenancy Mediator:

“Order”, in relation to the Tribunal, means any order, decision, determination, consent, approval, or ruling given or made by the Tribunal; and includes an order by the Tribunal dismissing an application:

“Periodic tenancy” means a residential tenancy other than a fixed-term tenancy:

“Possession order” means an order made by the Tribunal under section 64 or section 65 of this Act granting possession of any premises to any person named in the order:

“Premises” includes—

(a) Any part of any premises; and

(b) Any land and appurtenances, other than facilities; and

(c) Any mobile home, caravan, or other means of shelter placed or erected upon any land and intended for occupation on that land:

“Prescribed” means prescribed by this Act or by regulations made under this Act:

“Principal Tenancy Adjudicator” means the Principal Tenancy Adjudicator appointed under section 67 (2) (a) of this Act:

“Prospective landlord” means a person who has offered to grant a tenancy to any other person, or who has entered into negotiations with any other person for the granting of a tenancy to that other person:

“Prospective tenant” means a person to whom any other person has offered to grant a tenancy, or with whom any other person has entered into negotiations for the granting of a tenancy to that person:

“Protected tenancy” means a tenancy where—

(a) The tenant has been in continuous lawful occupation of the premises from and including the 18th day of November 1961 (being the date of the passing of the Tenancy Amendment Act 1961); and

(b) The premises were, immediately before the date of the commencement of this Act, subject to the Tenancy Act 1955:

“Registrar”, in relation to the Tribunal, means a Registrar of the Tribunal appointed under section 72 of this Act; 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:

“Rent” means any money, goods, services, or other valuable consideration in the nature of rent to be paid or supplied under a tenancy agreement by the tenant; but does not include any sum of money payable or paid by way of bond:

“Residential premises” means any premises used or intended for occupation by any person as a place of residence:

“Service tenancy” means a tenancy granted pursuant to a term of, or otherwise as an incident of, a contract of service between the landlord as employer and the tenant as employee, 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—

(a) Any such tenancy granted pursuant to or in accordance with any enactment; and

(b) Any such tenancy granted by one company to an employee of an associated company (within the meaning of subsection (2) of this section); and

(c) Any tenancy granted by the Armed Forces to any person subject to the Armed Forces Discipline Act 1971:

“Tenancy”, in relation to any residential premises, means the right to occupy the premises (whether exclusively or otherwise) in consideration for rent; and includes any tenancy of residential premises implied or created by any enactment; and, where appropriate, also includes a former tenancy:

- “Tenancy agreement”, in relation to any residential premises, means any express or implied agreement under which any person, for rent, grants or agrees to grant to any other person a tenancy of the premises; and, where appropriate, includes a former tenancy agreement and any variation of a tenancy agreement:
- “Tenancy Mediator” means a Tenancy Mediator appointed under section 76 of this Act; and includes the Principal Tenancy Mediator appointed under that section:
- “Tenancy Officer” means a Tenancy Officer appointed under section 75 of this Act:
- “Tenant”, in relation to any residential premises that are the subject of a tenancy agreement, means the grantee of a tenancy of the premises under the agreement; and, where appropriate, includes—
- (a) A prospective tenant; and
 - (b) A former tenant; and
 - (c) A lawful successor in title of a tenant to the premises; and
 - (d) The personal representative of a deceased tenant; and
 - (e) An agent of a tenant:
- “Tribunal” means the Tenancy Tribunal constituted by section 67 of this Act:
- “Unlawful act” means anything declared by any of the provisions of this Act to be an unlawful act:
- “Witness summons” means a summons issued under section 98 of this Act requiring the person named in the summons to attend at a specified time and place and to give evidence or to produce any document or thing:
- “Work order” means an order by the Tribunal to carry out any repairs to any premises or to any chattels, or to rectify any deficiency in the performance of any services, by doing such work or attending to such matters (including the replacement of chattels) as may be specified in the order:
- “Working day” means any day other than—
- (a) A Saturday or Sunday; and
 - (b) The Sovereign’s Birthday, Anzac Day, Labour Day, and Waitangi Day; and
 - (c) The day observed in the appropriate area as the anniversary of the province of which the area forms part; and

(d) A day in the period commencing with Good Friday and expiring with the Tuesday after Easter; and

(e) A day in the period commencing with the 24th day of December and expiring with the 3rd day of January.

(2) For the purposes of paragraph (b) of the definition of the term "service tenancy" in subsection (1) of this section, two companies are associated if one is the wholly or partly owned subsidiary of the other.

(3) For the purposes of this Act, where any premises that are subject to a legal or an equitable lease are used for both commercial and residential purposes, the premises shall be deemed to be residential premises unless it is proved that the premises were let principally for purposes other than residential purposes.

Cf. 1952, No. 51, s. 104A; 1955, No. 50, s. 2; 1973, No. 26, s. 2; 1975, No. 36, s. 4; Residential Tenancies Act, 1978-1981 (South Australia), s. 5

PART I

APPLICATION OF ACT

3. Act to bind the Crown—This Act shall bind the Crown.

Cf. 1951, No. 51, s. 104B; 1955, No. 50, s. 5; 1973, No. 26, s. 3; 1975, No. 36, s. 4

4. Act generally to apply to all residential tenancies—Except as otherwise provided in this Part of this Act, this Act shall apply to every tenancy for residential purposes.

5. Act excluded in certain cases—This Act shall not apply in the following cases:

(a) Where the premises are commercial premises:

(b) Where the premises include more than 1 hectare of land and the whole or a substantial part of the tenant's income is derived from the use of that land for agricultural, pastoral, horticultural, or other similar purposes:

(c) Where the premises constitute part of a penal institution of a kind specified in section 4 (1) of the Penal Institutions Act 1954:

(d) Where the premises constitute part of any hospital, home, or other institution for the care of sick, disabled, or aged persons:

- (e) Where the premises constitute part of Police barracks, or Police cells and lock-ups:
- (f) Where the premises constitute any barracks conducted by the Armed Forces for the accommodation of persons subject to the Armed Forces Discipline Act 1971:
- (g) Where the premises constitute any barracks or hostel conducted by an employer for the accommodation of employees of that employer or (where the employer is a company) for the accommodation of employees of any associated company (within the meaning of section 2 (2) of this Act):
- (h) Where the premises constitute part of—
 - (i) Any hostel, dormitory, or other similar type of premises providing accommodation for students attending any university, college, school, or other educational institution; or
 - (ii) Any other hostel, dormitory, or other similar type of premises situated on land comprised in one certificate of title only and designed to provide accommodation for at least 20 persons:
- (i) Where the premises constitute part of a building occupied by a club and used by the club for the provision of temporary or transient accommodation to members of the club:
- (j) Where the premises constitute part of any premises in respect of which a hotel premises licence or a tourist-house premises licence is in force under the Sale of Liquor Act 1962:
- (k) Where the premises constitute part of any hotel, motel, boardinghouse, or lodginghouse used for the provision of temporary or transient accommodation:
- (l) Where the landlord provides for the tenant any meals or services (not being services that the landlord is required by this or any other Act to provide for the tenant) and the value of those meals or services to the tenant or the cost to the landlord of their provision (whichever is the less) forms more than 20 percent of the total amount payable by the tenant by way of rent:
- (m) Where the premises are let for the tenant's holiday purposes:
- (n) Where the premises continue to be used, during the tenancy, principally as a place of residence by the landlord or by any member of the landlord's family:

- (o) Where the tenant is the purchaser of the premises under an agreement for sale and purchase with the landlord as vendor, not being an agreement that is revocable at will by the vendor:
- (p) Where any of the tenants is also the landlord or one of the landlords by virtue of an arrangement of a kind commonly known as a “cross-lease” or “lease-back” arrangement:
- (q) Where the tenant’s interest in the premises is a stratum estate in leasehold under the Unit Titles Act 1972:
- (r) Where the tenancy arises wholly from or depends wholly upon the ownership by the tenant of any shares in a company that owns the premises:
- (s) Where the tenancy agreement, not being in the nature of a domestic or family arrangement, 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 any of the tenant’s employees, and the tenancy is granted and taken genuinely for that purpose and not for the purpose of evading all or any of the provisions of this Act:
- (t) Where the premises comprise bare land (with or without facilities) on which the tenant has the right under the tenancy agreement to place or erect a mobile home, caravan, or other means of shelter.

Cf. Residential Tenancies Act, 1978–1981 (South Australia), s. 7

6. Long fixed-term tenancies—This Act shall not apply where the premises are let for a fixed-term tenancy of at least 5 years.

7. Short fixed-term tenancies—(1) Subject to subsection (2) of this section, nothing in sections 25 to 28 and 51 of this Act shall apply to a fixed-term tenancy of not more than 120 days if, before the commencement of the tenancy, the parties agree in writing that the tenancy will not be extended or renewed to give a total length of the term in excess of 120 days.

(2) Where such a tenancy is extended or renewed, whether once or more than once, with the result that the total length of the term exceeds 120 days, on the expiry of that period of 120 days the tenancy shall become subject to sections 25 to 28 and 51 (as well as all the other provisions) of this Act.

(3) For the purposes of this section, the term “fixed-term tenancy” includes such a tenancy terminable by notice.

8. Parties to excluded tenancies may agree that Act shall apply—(1) Nothing in any of sections 5 to 7 of this Act shall prevent the parties to a tenancy that would otherwise be excluded from this Act by virtue of any of the provisions of those sections, being a tenancy of any premises used or intended to be used for residential premises, from agreeing in writing that all or any of the provisions of this Act shall apply in respect of the tenancy, either without modification or with such modifications as they may so agree.

(2) Without limiting subsection (1) of this section, any such agreement may confer upon the Tribunal, in respect of the tenancy, all or any of the jurisdiction conferred on the Tribunal by this Act in respect of tenancies to which this Act applies.

9. Existing tenancies—(1) Subject to subsection (2) of this section and to sections 5 to 7 of this Act, in respect of every tenancy granted before the date of the commencement of this Act and still subsisting immediately before that date, this Act shall apply on and after that date.

(2) Nothing in sections 12, 14, 23, 24, 30, 32, 39, 40, 44 to 46, 58, and 59 of this Act shall apply to—

(a) Any fixed-term tenancy granted before the date of the commencement of this Act and still subsisting immediately before that date; or

(b) Any service tenancy granted before that date and still subsisting immediately before that date, unless and until the tenancy is renewed or the tenant's interest under the tenancy agreement is lawfully assigned.

(3) Subject to sections 5 to 7 of this Act, in respect of any tenancy granted before the date of the commencement of this Act and still subsisting immediately before that date, the following provisions shall apply:

(a) All the express or implied terms, provisions, covenants, and conditions of the tenancy agreement by which the tenancy was created shall continue to have the same force and effect as they had immediately before that date, except to the extent that they are inconsistent with any of the provisions of this Act (except, in the case of a fixed-term tenancy or a service tenancy, those provisions specified in subsection (2) of this section) or are varied by agreement between the parties or by order made by the Tribunal under this Act:

(b) Any proceedings instituted in relation to the tenancy before that date may be continued and completed as if this Act had not been passed:

- (c) Any notice issued before that date determining or forfeiting the tenancy shall have effect and may be enforced as if this Act had not been passed:
- (d) Any process or procedure commenced before that date whereby the rent payable for the tenancy could be varied may be continued and completed, and shall have effect to vary the rent, as if this Act had not been passed, but subject to any order made by the Tribunal under section 25 of this Act:
- (e) No person shall be liable in any civil or criminal proceedings by virtue of any of the provisions of this Act for anything lawfully done or lawfully omitted to be done before that date.

Cf. Residential Tenancies Act, 1978–1981 (South Australia), s. 7A

10. Onus of proof—Where, in any proceedings before the Tribunal, any party contends that this Act does not apply in respect of any tenancy of any residential premises, it shall be for that party to establish the facts upon which it is contended that this Act does not apply.

11. Act generally to apply despite contrary provisions—

(1) Any agreement or arrangement, or any provision of any agreement or arrangement, entered into in respect of a tenancy to which this Act applies, that is inconsistent with any of the provisions of this Act, or that purports to exclude, modify, or restrict the operation of any such provision, shall be of no effect unless—

- (a) The inconsistency, exclusion, modification, or restriction is expressly permitted by this Act; or
- (b) The Tribunal is satisfied that, having regard to the nature of the tenancy, the provisions of the tenancy agreement, the interests of the parties, and all other relevant circumstances of the case, the inconsistency, exclusion, modification, or restriction should be permitted.

(2) Subsection (1) of this section shall not prevent a landlord from waiving voluntarily all or any of the rights and powers conferred on landlords by this Act, or from voluntarily incurring more or more extensive obligations than those that are imposed on landlords by this Act.

(3) Any purported waiver by a tenant of any right or power conferred upon tenants by this Act shall be of no effect.

Cf. 1952, No. 51, s. 104c; 1955, No. 50, s. 51; 1973, No. 26, s. 28; 1975, No. 36, s. 4; Residential Tenancies Act, 1978–81 (South Australia), s. 89 (1), (2)

PART II

TENANCY AGREEMENTS

*Preliminary Matters***12. Discrimination on certain grounds prohibited—**

(1) Except with the prior consent of the Tenancy Tribunal, a landlord shall not, in respect of the grant, continuance, extension, variation, termination, or renewal of a tenancy agreement, discriminate against any person on any of the following grounds:

- (a) That that person has had a child, or is pregnant, or is not sterile:
- (b) That it is intended that a child will reside in the premises or that a child is or has been residing in the premises during the tenancy:
- (c) That that person is unemployed or is likely to become unemployed.

(2) Except with the prior consent of the Tenancy Tribunal, a landlord shall not, in respect of the grant, continuance, extension, variation, termination, or renewal of a tenancy agreement,—

- (a) Instruct any person to discriminate against any other person on any of the grounds set out in subsection (1) of this section; or
- (b) State an intention (whether by advertisement or otherwise) to discriminate against any person on any of those grounds.

(3) Discrimination against any person in contravention of subsection (1) of this section, and the giving of an instruction or the stating of an intention in contravention of subsection (2) of this section, is each hereby declared to be an unlawful act.

(4) Nothing in subsection (1) (c) of this section shall apply to the termination of a service tenancy on the ground that the tenant has ceased to be, or is about to cease to be, employed by the landlord or (where the landlord is a company) by an associated company (within the meaning of section 2 (2) of this Act).

(5) Nothing in this section shall limit or affect the application to the letting of residential premises of any of the provisions of the Race Relations Act 1971 or the Human Rights Commission Act 1977 relating to unlawful discrimination against persons on the grounds of colour, race, ethnic or national origins, sex, marital status, or religious or ethical belief.

Cf. 1952, No. 51, ss. 33A, 33B; 1955, No. 50, s. 52; 1965, No. 16, s. 2; 1973, No. 26, s. 24; 1977, No. 119, s. 2; Residential Tenancies Act, 1978–1981 (South Australia), s. 58

13. Form of tenancy agreements—(1) Subject to subsection (2) of this section, each party to a tenancy agreement shall be entitled to insist on the agreement, and any variation of the agreement, being in writing and in duplicate, and on the right to retain 1 copy signed by the other party.

(2) Subsection (1) of this section does not apply to any of the following:

- (a) A tenancy at will created on or immediately after the determination or expiry of a tenancy;
- (b) A tenancy agreement that was in force immediately before the date of the commencement of this Act;
- (c) Any variation of a tenancy agreement made by, or at the direction of, the Tribunal.

14. Minors—(1) A person who has attained the age of 18 years or who is or has been married under that age shall have the same capacity in respect of tenancy agreements, and in respect of the settlement of disputes arising in relation to tenancy agreements, as persons of full age have.

(2) Subject to subsection (3) of this section, where during a tenancy, the tenant attains the age of 18 years or marries for the first time under that age, the tenancy agreement shall thereafter have the same force and effect as it would have had if the tenant had been of full age at the time when the tenant entered into the agreement.

(3) In any case to which subsection (2) of this section applies, the tenant may, within 10 working days after the date on which the tenant attains the age of 18 years or marries, apply to the Tribunal for an order relieving the tenant of all or any of the obligations imposed on the tenant by the agreement.

(4) Subject to subsections (1) and (2) of this section, the Tribunal shall have and may exercise, in respect of tenancy agreements, all the jurisdiction and powers conferred on the High Court or a District Court by the Minors Contracts Act 1969.

(5) Except where any proceedings are transferred to a District Court under section 83 (2) of this Act or an appeal is brought under any of sections 117, 119, and 120 of this Act, no court shall have jurisdiction under the Minors Contracts Act 1969 in respect of any tenancy agreement.

15. Landlord's name, address, and occupation—(1) On entering into a tenancy agreement, the landlord shall cause the tenant to be notified of—

- (a) The full name, address, and occupation of the landlord, or (if the landlord is a company) the name of the company, the address of its registered office, and the

full name and business address of its secretary or (at the company's option) of the officer responsible to the company for the administration of the tenancy; and

(b) An address for service, being the address at which notices and other documents relating to the tenancy will be accepted by or on behalf of the landlord.

(2) A Post Office box number or other similar postal address shall not be a sufficient address for the purposes of subsection (1) of this section.

(3) Where, during the term of any tenancy, the landlord's interest passes to some other person, that other person shall, within 14 days thereafter, comply with subsection (1) of this section as if the tenancy were then commencing.

(4) Where the name, address, and occupation of any person has been notified to the tenant in accordance with this section and that name or address or occupation subsequently changes (otherwise than in circumstances to which subsection (3) of this section applies), the landlord shall, within 14 days thereafter, cause notice of the new particulars to be given to the tenant.

Cf. Residential Tenancies Act, 1978-1981 (South Australia), s. 54

16. Tenant's name, address, and occupation—(1) On entering into a tenancy agreement the tenant shall cause the landlord to be notified of—

(a) The full name, address (where that is different from the address of the premises to which the agreement relates), and occupation of the tenant; and

(b) An address for service, being the address at which notices and other documents relating to the tenancy will be accepted by or on behalf of the tenant.

(2) A Post Office box number or other similar postal address shall not be a sufficient address for the purposes of subsection (1) of this section.

(3) Where, during the term of the tenancy, the tenant's interest passes to some other person, that other person shall, within 14 days thereafter, comply with subsection (1) of this section as if the tenancy were then commencing.

(4) Where the name, address, and occupation of any tenant has been notified to the landlord in accordance with this section and that name, address, or occupation subsequently changes (otherwise than in circumstances to which subsection (3) of this section applies), the tenant shall, within 14 days thereafter, cause notice of the new particulars to be given to the landlord.

Cf. Residential Tenancies Act, 1978-1981 (South Australia), s. 54

Key Money, Bonds, and Rents

17. Requiring key money prohibited—(1) Subject to subsection (4) of this section, no person shall, without the prior consent of the Tribunal, require the payment of key money in respect of—

- (a) The grant, continuance, extension, variation, or renewal of any tenancy agreement; or
- (b) The assignment of a tenant's interest under any tenancy agreement; or
- (c) The subletting of the whole or any part of the premises by a tenant.

(2) The Tribunal shall not give its consent under subsection (1) of this section unless it is satisfied that, having regard to the special circumstances of the case, including the nature of the premises and any matters personal to the landlord or the tenant or the proposed assignee or the proposed subtenant, it would be fair and reasonable to allow the requirement of key money.

(3) The requiring of key money in contravention of subsection (1) of this section is hereby declared to be an unlawful act.

(4) Subsection (1) of this section shall not apply to any of the following:

- (a) Any sum required or received for an option to enter into a tenancy agreement if the sum does not exceed 1 week's rent payable under the agreement, and, upon the option being exercised, the sum is refunded or is applied toward the rent;
- (b) Any sum that the landlord is authorised by any other provision of this Act to require or receive;
- (c) Any sum required to be paid by the tenant to or at the direction of the landlord in respect of any fee or other charge for services rendered by any solicitor or real estate agent relating to the grant or assignment of the tenancy;
- (d) Any payment of a prescribed class.

Cf. 1973, No. 26, s. 22; Residential Tenancies Act, 1978-1981 (South Australia), s. 30

18. Bonds to be no more than 4 weeks' rent—(1) A landlord shall not require payment by way of bond of an amount greater than 4 weeks' rent lawfully payable under the tenancy agreement.

(2) On the lawful increase of the rent, the landlord may require payment by way of bond of a further sum not exceeding the amount by which the rent payable for 4 weeks has been increased.

(3) On the decrease of the rent, the amount by which the total sum already paid by way of bond exceeds the rent payable for 4 weeks following the decrease shall, on application to the Corporation by the person who paid the bond, be refunded to the tenant.

(4) Requiring payment by way of bond of an amount greater than that permitted by this section is hereby declared to be an unlawful act.

Cf. 1973, No. 26, s. 21; Residential Tenancies Act, 1978–1981 (South Australia), s. 32 (1), (1A), (1B)

19. Duties of landlord on receipt of bond—(1) Where any person pays to the landlord, or to any other person on behalf of the landlord, any amount by way of bond, the following provisions shall apply:

(a) The person who receives the payment shall forthwith give to the payer a written receipt, signed by that person, showing—

(i) The address of the premises to which the payment relates; and

(ii) The amount and nature of the payment; and

(iii) The date of the payment; and

(iv) The name of the payer (if known to the person who receives the payment):

(b) The landlord shall, within 15 working days after the payment is made, forward the amount received to the Corporation, together with a statement of particulars in the prescribed form signed by the landlord and the tenant, and a copy of the receipt issued in respect of the payment in accordance with paragraph (a) of this subsection.

(2) Failure to issue a receipt, or to forward any amount received, in accordance with this section is hereby declared to be an unlawful act.

Cf. Residential Tenancies Act, 1978–1981 (South Australia), s. 32 (2)

20. Duties of Corporation—Where a landlord forwards to the Corporation any amount paid by way of bond, the following provisions shall apply:

(a) The Corporation shall deposit the amount to the credit of Part A of the Fund:

(b) The Corporation shall give to the landlord a written receipt showing—

(i) The address of the premises to which the payment relates; and

- (ii) The name of the landlord; and
 - (iii) The name of the tenant; and
 - (iv) The amount and nature of the payment; and
 - (v) The date of the receipt by the Corporation of the payment:
- (c) The Corporation shall give to the tenant a copy of the receipt issued in accordance with paragraph (b) of this section.

21. Tenant may pay bond direct to Corporation with landlord's consent—(1) Notwithstanding anything in section 19 or section 20 of this Act, but subject to subsection (2) of this section, any amount payable by way of bond may, with the consent of the landlord, be paid direct to the Corporation.

(2) No such payment may be made to the Corporation otherwise than in cash, or by a cheque drawn on a solicitor's trust account, or by a bank cheque, and every such payment shall be accompanied by a statement of particulars in the prescribed form signed by the landlord and the tenant.

(3) Where any amount payable by way of bond is paid direct to the Corporation, the following provisions shall apply:

- (a) The Corporation shall deposit the amount to the credit of Part A of the Fund:
- (b) The Corporation shall give to the tenant a written receipt showing—
 - (i) The address of the premises to which the payment relates; and
 - (ii) The name of the landlord; and
 - (iii) The name of the tenant; and
 - (iv) The amount and nature of the payment; and
 - (v) The date of the receipt by the Corporation of the payment:
- (c) The Corporation shall give to the landlord a copy of the receipt issued in accordance with paragraph (b) of this subsection.

22. Claims against bonds—(1) No amount paid into Part A of the Fund in accordance with section 20 or section 21 of this Act shall be paid out of the Fund except in accordance with this section.

(2) Every application for the payment of any money out of Part A of the Fund in accordance with this section shall be made to the Corporation in the prescribed form.

(3) The Corporation shall, on an application made to it at any time by the landlord, repay the bond to the tenant.

(4) The Corporation shall, on the application of both the landlord and the tenant, or on the application of one of them and with the consent of the other, pay the bond in accordance with the terms of the application or of any subsequent agreement reached by the parties.

(5) Subject to the succeeding provisions of this section, the Corporation shall,—

(a) On the application of the landlord made at any time during or after the termination of the tenancy; or

(b) On the application of the tenant made at any time after the termination of the tenancy,—

pay the bond in accordance with the terms of the application.

(6) On receipt of an application made to it under subsection (5) of this section, the Corporation shall give to the other party written notice of the application, inviting that other party to indicate, by written notice to the Corporation within 10 working days after receipt of the notice of the application, whether or not that other party wishes to contest the application.

(7) If the Corporation receives from the other party a written indication that that other party does not wish to contest the application, the Corporation shall pay the bond in accordance with the terms of the application.

(8) If the Corporation does not receive from the other party, within the time allowed, a written indication whether or not that other party wishes to contest the application, the Corporation shall either—

(a) Pay the bond in accordance with the terms of the application; or

(b) Refer the matter to the Tribunal for determination, if there are reasonable grounds to believe that the payment of the bond in the absence of any response from that other party would not be just.

(9) If the Corporation receives from the other party, within the time allowed, a written indication that that other party wishes to contest the application, the Corporation shall refer the matter to the Tribunal for determination.

(10) Where any matter is referred to the Tribunal under subsection (8) (b) or subsection (9) of this section, the application made to the Corporation under subsection (5) of this section shall be deemed to be an application made to the Tribunal under section 86 of this Act.

(11) If, on the termination of a tenancy, neither the landlord nor the tenant applies to the Corporation in respect of the bond, the Director-General may apply to the Tribunal for an order determining the person or persons to whom, and (where appropriate) the proportions in which, the bond is to be paid.

23. Rent in advance—(1) A landlord shall not require the payment of any rent—

- (a) More than 2 weeks in advance; or
- (b) Before the expiry of the period for which rent has been paid already.

(2) Where, in the case of a service tenancy or of any other tenancy where the landlord is the employer of the tenant,—

- (a) The landlord, by agreement with the tenant or pursuant to or in accordance with any enactment, regularly deducts from the tenant's pay for a standard pay period the amount of rent payable by the tenant for any standard rental period; and
- (b) No such regular deduction is such as to constitute a contravention of subsection (1) of this section; and
- (c) Because of a forthcoming holiday period or for any other special reason, the landlord pays the tenant for a period longer than the standard pay period,—

the landlord may, notwithstanding subsection (1) of this section, deduct from the amount so paid the amount of rent payable by the tenant for any period longer than the standard rental period so long as the proportion of pay so deducted on account of rent does not exceed the proportion of pay regularly deducted.

(3) A landlord shall not require any payment of rent to be made by postdated cheque or other similar postdated order.

(4) The requirement of the payment of rent in contravention of this section is hereby declared to be an unlawful act.

Cf. 1973, No. 26, s. 21; Residential Tenancies Act, 1978–1981 (South Australia), ss. 31, 39

24. Rent increases—(1) Subject to subsection (2) of this section, the rent payable in respect of any tenancy shall not be increased within 180 days after the date of the commencement of the tenancy, nor within 180 days after the date on which the last increase took effect.

(2) Where, in respect of any premises,—

- (a) It is the landlord's practice (the proof of which shall lie on the landlord) to review the rent annually on a particular day in each year; and
- (b) Provision to that effect is included in the tenancy agreement or the tenant is otherwise informed of the practice in writing before the commencement of the tenancy,—

the landlord may increase the rent on the specified date in any year notwithstanding that that date may fall within 180

days after the commencement of a tenancy of those premises, but may not increase the rent on any other date in any year.

(3) Subject to subsections (1), (2), (4), and (5) of this section, the rent payable in respect of any tenancy may be increased by the landlord by notice in writing to the tenant specifying the amount of the increased rent and stating the day upon which the increased rent shall become payable, being a day not less than 60 days after the date on which the notice is given.

(4) Nothing in subsection (2) of this section shall entitle any landlord under a fixed-term tenancy to increase the rent otherwise than as permitted by the agreement.

(5) Where the Tribunal has made an order under section 25 of this Act and that order is still in force, the rent shall not be increased to an amount in excess of the amount specified in the order.

(6) A notice of an increase in rent lawfully given under this section shall, unless it is withdrawn by the landlord, have the effect of varying the tenancy agreement in accordance with the terms of the notice.

(7) Where a landlord has given a notice to increase the rent and subsequently realises that, because of—

(a) Some error in calculating the day on which the increased rent is to become payable or in the manner in which that day is expressed in the notice; or

(b) Some delay in serving the notice,—
the day fixed in the notice for the increased rent to become payable is in contravention of subsection (1) or subsection (3) of this section, the landlord may, with the agreement of the tenant or (failing such agreement) with the consent of the Tribunal, give to the tenant a further notice varying the original notice so as to bring the terms of the original notice into accord with the provisions of that subsection or those subsections.

(8) Every notice given under subsection (7) of this section shall comply with the requirements of subsection (3) of this section.

(9) The Tribunal shall not give its consent under subsection (7) of this section unless it is satisfied—

(a) That the error or the delay was inadvertent; and

(b) That the landlord has sought to correct the matter as soon as practicable; and

(c) That it would not be unfair to the tenant to allow the original notice to be varied in the manner proposed.

Cf. Residential Tenancies Act, 1978-1981 (South Australia),
s. 34

25. Market rent—(1) On an application made to it at any time by the tenant, the Tribunal may, in accordance with the succeeding provisions of this section, on being satisfied that the rent payable or to become payable for the tenancy exceeds the market rent by a substantial amount, make an order reducing the rent to an amount, to be specified in the order, that is in line with the market rent.

(2) Notwithstanding anything in subsection (1) of this section, no application may be made under that subsection in respect of the rent payable under a fixed-term tenancy later than 3 months after—

(a) The date of the commencement of the tenancy or (in the case of a tenancy that was subsisting immediately before commencement of this Act) the date of the commencement of this Act; or

(b) The date of the last review of rent,—
whichever is the later.

(3) For the purposes of this Act, the market rent for any tenancy shall be the rent that, without regard to the personal circumstances of the landlord or the tenant, a willing landlord might reasonably expect to receive and a willing tenant might reasonably expect to pay for the tenancy, taking into consideration the general level of rents for comparable tenancies of comparable premises in the locality or in similar localities and such other matters as the Tribunal considers relevant.

(4) An order made under this section shall take effect on and from a date to be specified in the order, which may be the date of the order or any earlier or later date, but being no earlier than the date of the application for the order and no later than 30 days after the date of the order.

Cf. 1955, No. 50, ss. 20, 21; 1961, No. 66, s. 7; 1973, No. 26, ss. 6, 8; Residential Tenancies Act, 1978–1981 (South Australia), s. 36 (1) to (3)

26. Duration of order determining market rent—

(1) Subject to the succeeding provisions of this section, every order made by the Tribunal under section 25 of this Act shall continue in force—

(a) In the case of a periodic tenancy, for a period of 6 months or such shorter period as the Tribunal may specify in the order; or

(b) In the case of a fixed-term tenancy, for such period as the Tribunal may specify in the order.

(2) The Tribunal may at any time, on the application of the landlord or the tenant, rehear any application made under

section 25 of this Act if, in respect of any order made on that application, the Tribunal is satisfied that—

- (a) The order was procured by fraud or other dishonest conduct; or
- (b) The Tribunal, in making the order, took into account any misleading or irrelevant evidence; or
- (c) New and material evidence is available; or
- (d) By any error or omission, an injustice has been occasioned by the order.

Cf. 1955, No. 50, s. 22; 1973, No. 26, s. 9; Residential Tenancies Act, 1978–1981 (South Australia), s. 36 (4), (5)

27. Rent in excess of market rent irrecoverable—

(1) Where the Tribunal makes an order under section 25 of this Act, the landlord shall not, in respect of any period during which the order is in force, require the payment of any sum by way of rent in excess of the amount specified by the Tribunal in the order.

(2) Requiring the payment of any amount by way of rent in contravention of subsection (1) of this section is hereby declared to be an unlawful act.

(3) No amount by way of rent in excess of the amount so specified in any such order shall be payable or recoverable in respect of any period during which the order is in force.

(4) Where the Tribunal is satisfied that the landlord of any residential premises has received any amount by way of rent that, by virtue of subsection (3) of this section, was not lawfully payable, it shall order that the whole of that amount be refunded by the landlord to the tenant, except to the extent (if any) that the Tribunal considers, having regard to the special circumstances of the case, it would be unjust to require such a refund in full.

(5) Where the Tribunal makes an order under subsection (4) of this section for the refund of any amount to the tenant of any residential premises, the tenant shall be entitled, in addition to any other remedy that the tenant may have, to deduct the whole or any part of the amount to be refunded from any sum that may become payable by the tenant to the landlord under the tenancy agreement at any time within 1 year after the date of the order.

Cf. 1955, No. 50, s. 23; 1973, No. 26, ss. 10, 11; Residential Tenancies Act, 1978–1981 (South Australia), s. 36 (6)

28. Increase of rent where premises or facilities substantially improved—(1) Notwithstanding anything in section 24 or section 26 of this Act, where, during any tenancy, the landlord—

- (a) Effects substantial improvements to the premises, or provides more or better facilities or services for the tenant, with the consent of the tenant; or
- (b) Incurs in respect of the premises expenses of a nature or an amount that could not reasonably have been foreseen when the rent was last fixed,—

the Tribunal may, on application by the landlord, make an order for the increase of the rent to or by such amount as the Tribunal thinks fit.

(2) No order made under subsection (1) of this section shall affect the date on which the rent payable for the tenancy could have been reviewed or increased if the order had not been made.

(3) Where an order is made under subsection (1) of this section during the currency of any order made by the Tribunal under section 25 of this Act, the later order shall be made by way of amendment of the earlier order, and shall not affect the date on which the earlier order shall expire.

29. Receipts for rent—(1) Subject to subsection (3) of this section, every person who receives any rent payable under or in respect of any tenancy agreement shall give or cause to be given to the person paying the rent a written receipt bearing—

- (a) The address of the premises, or an appropriate code or reference to identify the premises to which the payment relates; and
- (b) The amount and nature of the payment; and
- (c) The date of the payment; and
- (d) The name (if known) of the person who made the payment.

(2) The receipt shall be given to the person paying the rent—

- (a) Forthwith, where payment is made in cash; or
- (b) Within 72 hours after payment, in any other case.

(3) On the written request of the tenant, the landlord shall also give to the tenant a written statement of the period to which any payment of rent relates.

(4) Nothing in subsection (1) of this section shall apply—

- (a) To any rent paid out of a bank account in the name of the tenant by automatic payment through the bank or by way of a non-negotiable personal cheque or other similar non-negotiable instrument drawn on that account; or

- (b) To any rent paid into any account nominated by the landlord and operated by the landlord exclusively in respect of the tenancy; or
 - (c) To any rent paid by way of deduction from the tenant's pay, or from any benefit to which the tenant is entitled under the Social Security Act 1964, and paid into a bank account nominated by the landlord.
- (5) Failure to give a receipt or written statement in accordance with this section is hereby declared to be an unlawful act.

Cf. 1973, No. 26, s. 23; Residential Tenancies Act, 1978-1981 (South Australia), s. 37

30. Landlord to keep records—(1) Every landlord under a tenancy to which this Act applies shall keep or cause to be kept proper business records showing all payments of rent paid by or on behalf of the tenant, sufficient to enable the landlord to comply within a reasonable time with any request made by the tenant under section 29 (3) of this Act.

(2) Failure to keep records in accordance with this section is hereby declared to be an unlawful act.

Cf. Residential Tenancies Act, 1978-1981 (South Australia), s. 38

31. Apportionment of rent—(1) The rent payable under a tenancy agreement shall accrue from day to day.

(2) Upon termination of the tenancy, the rent shall be apportioned accordingly, and the appropriate amount shall be payable or recoverable forthwith.

Cf. Residential Tenancies Act, 1978-1981 (South Australia), s. 40

32. Accelerated rent or damages prohibited—(1) Any provision in a tenancy agreement to the effect that, on breach by the tenant of any term of the agreement or of any of the provisions of this Act or of any other enactment, the tenant shall be liable to pay—

- (a) The whole or any part of the rent remaining payable under the agreement; or
 - (b) Rent of an increased amount; or
 - (c) A sum specified in the agreement by way of damages or penalty,—
- shall be of no effect.

(2) Any provision in a tenancy agreement to the effect that, if the tenant does not breach any term of the agreement or any of the provisions of this Act or of any other enactment,

the rent shall or may be reduced or the tenant shall or may be granted or paid a rebate, refund, or other benefit, shall be construed as entitling the tenant to that reduction, rebate, refund, or other benefit in any event.

Cf. Residential Tenancies Act, 1978-1981 (South Australia), s. 59

33. Tenant's goods not to be seized in payment of rent—

(1) The landlord shall not be entitled to seize or dispose of any of the tenant's goods as security for or in payment of any amount owing by way of rent.

(2) Seizing or disposing of any goods in contravention of subsection (1) of this section is hereby declared to be an unlawful act.

(3) Nothing in this section shall limit or affect the way in which any order of the Tribunal, or of any court on appeal from the Tribunal, may be enforced.

Cf. 1952, No. 51, s. 107A; 1975, No. 36, s. 7; Residential Tenancies Act, 1978-1981 (South Australia), s. 41

34. Transitional provision relating to bonds—(1) Where, at the date of the commencement of this Act, a landlord is holding any amount paid to the landlord by way of bond, being an amount of \$50 or more, the landlord shall, on or before the 30th day of April 1987, pay the amount of the bond to the Corporation.

(2) Failure to pay any amount in accordance with this section is hereby declared to be an unlawful act.

(3) The provisions of sections 20 and 22 of this Act, with any necessary modifications, shall apply in respect of all money paid to the Corporation under this section.

35. Transitional provisions relating to fair rents and equitable rents—(1) Any person who, immediately before the date of the commencement of this Act, was a tenant under a protected tenancy may apply to the Tribunal for an order fixing the rent payable by that tenant for the tenancy at an amount less than the market rent, and the Tribunal may make such an order if it is satisfied that the hardship that would be caused to the tenant by requiring payment of the market rent exceeds the hardship that would be caused to the landlord by making an order under this section.

(2) No order made under subsection (1) of this section shall have effect after the expiry of a period of 12 months commencing with the date of the commencement of this Act.

(3) An order fixing rent under subsection (1) of this section shall be deemed for the purposes of sections 26 to 28 of this Act to be an order made under section 25 of this Act; and those provisions, with any necessary modifications, shall apply accordingly.

(4) Where, immediately before the commencement of this Act, there was in force in respect of any premises an assessment made under the Rent Appeal Act 1973 fixing the equitable rent of the premises, the rent payable for those premises under any tenancy agreement shall not be increased during the period that the assessment would have remained in force by virtue of section 9 of that Act had that Act not been repealed by this Act, otherwise than pursuant to an order made by the Tribunal under section 25 of this Act.

Rights and Obligations of Parties

36. Legal impediments to occupation—The landlord shall take all reasonable steps to ensure that, at the commencement of the tenancy, there is no legal impediment to the occupation of the premises for residential purposes.

Cf. Residential Tenancies Act, 1978-1981 (South Australia),
s. 45

37. Vacant possession—(1) The tenant shall have vacant possession of the premises on the date on which, in accordance with the tenancy agreement, the tenant is entitled to enter into occupation of the premises.

(2) In this section “premises” does not include facilities.

Cf. Residential Tenancies Act, 1978-1981 (South Australia),
s. 44

38. Quiet enjoyment—(1) The tenant shall be entitled to have quiet enjoyment of the premises without interruption by the landlord or any person claiming by, through, or under the landlord or having superior title to that of the landlord.

(2) The landlord shall 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) Contravention of subsection (2) of this section in circumstances that amount to harassment of the tenant is hereby declared to be an unlawful act.

(4) In this section “premises” includes facilities.

Cf. Residential Tenancies Act, 1978-1981 (South Australia),
s. 47

39. Outgoings—(1) Subject to subsection (2) of this section, all outgoings (including rates, insurance premiums, and land tax) from time to time payable in respect of the premises shall, as between the landlord and the tenant, be payable by the landlord.

(2) Except as the parties may otherwise agree in writing (whether in the tenancy agreement or otherwise), the following outgoings incurred during the tenancy shall, as between the landlord and the tenant, be payable by the tenant:

- (a) All charges for electricity or gas supplied to the premises;
- (b) All charges for excess water supplied to the premises;
- (c) All charges in respect of any telephone connected to the premises.

Cf. Residential Tenancies Act, 1978–1981 (South Australia), s. 51

40. Tenant's responsibilities—(1) The tenant shall—

- (a) Pay the rent as and when it is due and payable under the tenancy agreement; and
 - (b) Ensure that the premises are occupied principally for residential purposes; and
 - (c) Keep the premises reasonably clean and reasonably tidy; 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
 - (e) On the termination of the tenancy,—
 - (i) Quit the premises; and
 - (ii) Remove all his or her goods from the premises; and
 - (iii) Leave the premises in a reasonably clean and reasonably tidy condition, and remove or arrange for the removal from the premises of all rubbish.
- (2) The tenant shall not—
- (a) Intentionally or carelessly damage, or permit any other person to damage, the premises; or
 - (b) Use the premises, or permit the premises to be used, for any unlawful purpose; or
 - (c) Cause or permit any interference with the reasonable peace, comfort, or privacy of any of the landlord's other tenants in the use of the premises occupied by those other tenants, or with the reasonable peace, comfort, or privacy of any other person residing in the neighbourhood.

(3) Where the tenancy agreement specifies a maximum number of persons that may reside in the premises during the tenancy, the tenant shall ensure that no more than that number reside in the premises at any time during the tenancy.

(4) Where any damage to the premises is proved to have occurred during any tenancy to which this Act applies, it shall be for the tenant to prove that the damage did not occur in circumstances constituting a breach of subsection (2) (a) of this section.

(5) In this section, unless the context otherwise requires, "premises" includes facilities.

Cf. 1952, No. 51, s. 116D; 1975, No. 36, s.10; Residential Tenancies Act, 1978-1981 (South Australia), ss. 42, 43

41. Tenant's responsibility for actions of others—(1) The tenant shall be responsible for anything done or omitted to be done by any person (other than the landlord or any person acting on the landlord's behalf or with the landlord's authority) who is in 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.

(2) Where any person (other than the landlord or any person acting on the landlord's behalf or with the landlord's authority) intentionally or carelessly damages the premises while the tenant is in the premises, it shall be presumed that the tenant permitted that person to be in the premises unless the tenant proves that he or she took all reasonable steps to prevent that person from entering the premises or (as the case may require) to eject that person from the premises.

Cf. 1952, No. 51, s. 116E (6); 1975, No. 36, s. 10; Residential Tenancies Act, 1978-1981 (South Australia), s. 52

42. Tenant's fixtures—(1) The tenant shall not affix any fixture to the premises, or make any renovation, alteration, or addition of or to the premises, except—

- (a) In accordance with the tenancy agreement; or
- (b) With the prior written consent of the landlord.

(2) The landlord shall not withhold that consent unreasonably.

(3) The tenant may, at any time before the expiry of the tenancy, remove any fixture that the tenant has affixed to the premises during the term of the tenancy, unless the removal would cause irreparable damage to the premises.

(4) If, on removing such a fixture, the tenant causes any damage to the premises, the tenant shall inform the landlord

forthwith 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.

Cf. Residential Tenancies Act, 1978-1981 (South Australia), s. 50

43. Disposition of landlord's interest—(1) Where the landlord disposes of his or her interest in the premises to any other person (in this section referred to as the purchaser), the following provisions shall apply:

- (a) The landlord shall give to the tenant written notice of the disposition, including the name, address, and occupation of the purchaser so far as those particulars are known to the landlord:
- (b) Until that notice is received by the tenant, the tenant shall not be obliged to pay any rent to the purchaser, and shall not be liable to the purchaser in any proceedings in respect of any sum paid to the landlord on account of rent:
- (c) From and after the date on which the tenant receives that notice, or such later date as may be specified in the notice, the tenant shall pay to the purchaser all sums due and payable by way of rent in respect of any period commencing after that date.

(2) Nothing in subsection (1) (a) of this section shall absolve the purchaser from the obligation imposed on the purchaser by section 15 (3) of this Act.

44. Assignment and subletting by tenant—(1) There may be included in a tenancy agreement a provision that expressly and unconditionally prohibits the tenant from assigning, subletting, or parting with possession of the premises during the term of the tenancy.

(2) In the absence of such a provision, the tenant may at any time during the tenancy assign, sublet, or part with possession of the premises with the prior written consent of the landlord and in accordance with any conditions attached to that consent by the landlord.

(3) The landlord shall not withhold that consent unreasonably, nor attach any unreasonable conditions to it.

(4) Without limiting subsection (3) of this section, a landlord's consent shall be taken to have been withheld unreasonably if it is withheld—

- (a) On any of the grounds specified in section 12 (1) of this Act; or

(b) On the grounds of the colour, race, ethnic or national origins, sex, marital status, or religious or ethical belief of any person.

(5) On giving consent to any assignment, subletting, or parting with possession of the premises by the tenant, the landlord shall be entitled to recover from the tenant any expenses reasonably incurred by the landlord in respect of the proposed transaction.

(6) Where a tenant assigns his or her interest under the tenancy agreement to any other person with the consent of the landlord and in accordance with any conditions attached to that consent by the landlord, the tenant shall, on the date on which the assignment takes effect, cease to be responsible to the landlord for the obligations imposed on the tenant by the agreement and this Act, but without prejudice to any liability already incurred by the tenant to the landlord in respect of anything done or omitted to be done before that date.

Cf. 1952, No. 51, s. 110; 1965, No. 16, s. 3; 1975, No. 36, s. 9 (1); Residential Tenancies Act, 1978-1981 (South Australia), s. 52

45. Landlord's responsibilities—(1) The landlord shall—

- (a) Provide the premises in a reasonable state of cleanliness; and
- (b) Provide and maintain the premises 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
- (d) Compensate the tenant for any reasonable expenses incurred by the tenant in repairing the premises where—
 - (i) The state of disrepair has arisen otherwise than as a result of a breach of the tenancy agreement by the tenant and is likely to cause injury to persons or property or is otherwise serious and urgent; and
 - (ii) The tenant has made a reasonable attempt to give the landlord notice of the state of disrepair; and
- (e) Take all reasonable steps to ensure that none of the landlord's other tenants causes or permits any interference with the reasonable peace, comfort, or privacy of the tenant in the use of the premises.

(2) The landlord shall not interfere with the supply of gas, electricity, water, telephone services, or other services to the premises, except where the interference is necessary to avoid danger to any person or to enable maintenance or repairs to be carried out.

(3) The provisions of subsection (1) of this section shall apply notwithstanding that the tenant has notice of the state of the premises at the time at which the tenancy agreement is entered into.

(4) Nothing in subsection (1) of this section shall impose upon the landlord any obligation to repair any damage, or compensate the tenant for any want of repair, arising out of any breach by the tenant of any obligation imposed on tenants by section 40 of this Act.

(5) In this section "premises" includes facilities.

Cf. 1952, No. 51, s. 116H; 1975, No. 36, s. 10; Residential Tenancies Act, 1978-1981 (South Australia), s. 46 (1), (2), (4)

46. Locks—(1) The landlord shall provide and maintain such locks and other similar devices as are necessary to ensure that the premises are reasonably secure.

(2) Neither the landlord nor the tenant shall alter any existing lock or similar device, or add to or remove from the premises any lock or similar device, without the consent of the other given at the time that, or a reasonable time before, the alteration, removal, or addition is carried out.

(3) Failure to comply with subsection (1) of this section, and contravention of subsection (2) of this section, without reasonable excuse, is each hereby declared to be an unlawful act.

Cf. Residential Tenancies Act, 1978-1981 (South Australia), s. 48

47. Landlord to give notice to tenant of intention to sell—If, at any time after entering into a tenancy agreement, the landlord puts the premises on the market for the purposes of sale or other disposition, the landlord shall forthwith give written notice of that fact to the tenant.

48. Landlord's right of entry—(1) The landlord shall not enter the premises during the currency of the tenancy agreement, except—

(a) With the consent of the tenant given at, or immediately before, the time of entry; or

- (b) In any of the circumstances described in subsection (2) or subsection (3) of this section.
- (2) The landlord may enter the premises—
 - (a) In any case of emergency; or
 - (b) For the purpose of inspecting the premises, at any time between 8 o'clock in the morning and 7 o'clock in the evening on a day specified in a notice given to the tenant not less than 48 hours nor more than 14 days before the intended entry, and not more frequently than once in any period of 4 weeks; or
 - (c) For the purpose of determining whether or not the tenant has, within the period allowed by the landlord, completed satisfactorily any work required by the landlord to be done by the tenant to remedy any breach by the tenant of any of the provisions of the tenancy agreement or of this Act, at any time between 8 o'clock in the morning and 7 o'clock in the evening on any day (after the expiry of the period allowed for the work) specified in a notice given to the tenant not less than 48 hours nor more than 14 days before the intended entry; or
 - (d) For the purpose of carrying out necessary repairs to or necessary maintenance of, the premises, at any time between 8 o'clock in the morning and 7 o'clock in the evening of any day, after giving to the tenant notice of the intended entry and the reason for it at least 24 hours before the intended entry.
- (3) For the purpose of showing the premises to prospective tenants or to prospective purchasers, the landlord may, with the prior consent of the tenant (which shall not be unreasonably withheld) and subject to such reasonable conditions as the tenant may attach to that consent, enter the premises at any reasonable time.
- (4) Failure, without reasonable excuse, to allow the landlord to enter upon the premises in any circumstances in which the landlord is entitled to enter under subsection (2) or subsection (3) of this section is hereby declared to be an unlawful act.
- (5) Notwithstanding anything in subsection (2) or subsection (3) or subsection (4) of this section, the landlord shall not use force or the threat of force to enter or attempt to enter the premises while the tenant, or any other person with the permission of the tenant, is in the premises.
- (6) Every landlord who breaches subsection (5) of this section commits an offence and is liable to imprisonment for a term not exceeding 3 months or a fine not exceeding \$500.

(7) In this section “premises” does not include land or facilities.

(8) Nothing in this section shall apply in respect of any tenancy granted by the Armed Forces to any person subject to the Armed Forces Discipline Act 1971.

Cf. 1952, No. 51, s. 116G; 1975, No. 36, s. 10; Residential Tenancies Act, 1978–1981 (South Australia), s. 49

49. Mitigation of damage or loss—Where any party to a tenancy agreement breaches any of the provisions of the agreement or of this Act, the other party shall take all reasonable steps to limit the damage or loss arising from that breach, in accordance with the rules of law relating to mitigation of loss or damage upon breach of contract.

Cf. Residential Tenancies Act, 1978–1981 (South Australia), s. 60

Termination of Tenancies and Recovery of Possession

50. Circumstances in which tenancies are terminated—Subject in the case of a subtenancy to section 57 of this Act, no tenancy to which this Act applies shall terminate or be terminated otherwise than as follows:

- (a) On the expiry of the term of the tenancy, in the case of a fixed-term tenancy:
- (b) By the giving of notice of a period no shorter than that required by this Act, in the case of a periodic tenancy or where provision is made in the tenancy agreement for termination by notice:
- (c) Where the tenant acquires the landlord’s interest in the premises:
- (d) Where the tenant surrenders the tenancy, or delivers up vacant possession of the premises, to the landlord with the landlord’s written consent:
- (e) By disclaimer, by any person having lawful power to disclaim:
- (f) By order of the Tribunal pursuant to the powers conferred on it by this Act.

Cf. Residential Tenancies Act, 1978–1981 (South Australia), s. 61 (1)

51. Termination by notice—(1) Subject to sections 52 and 53 of this Act, the minimum period of notice required to be given by a landlord to terminate a tenancy shall be as follows:

- (a) Where the landlord requires the premises for occupation by the landlord or by any member of the landlord’s family, 42 days:

- (b) Where the landlord customarily uses the premises, or has acquired the premises, for occupation by employees of the landlord, that fact being clearly stated in the tenancy agreement, and the premises are required for occupation by such an employee, 42 days:
- (c) Where the landlord has agreed to sell the premises and is required by that agreement to yield the premises to the purchaser with vacant possession, 42 days:
- (d) In any other case, 90 days.

(2) Subject to sections 52 and 53 of this Act, the minimum period of notice required to be given by a tenant to terminate a tenancy shall be 21 days, in any case.

(3) Every notice to terminate a tenancy shall—

- (a) Be in writing; and
- (b) Identify the premises to which it relates; and
- (c) Specify the date by which the tenant is to vacate the premises; and
- (d) Be signed by the party giving the notice, or by that party's agent.

(4) In a notice to terminate a tenancy, no special form of words shall be required; and no such notice shall be held invalid for any failure to comply strictly with the requirements of subsection (3) of this section so long as the notice is in writing, the intention to terminate the tenancy on a particular date or on the expiry of a particular period is stated clearly in the notice, and that any non-compliance is not such as to mislead or affect unjustly the interests of the recipient.

(5) A notice to terminate a tenancy may be given on any day, and the period of notice may be expressed to expire on any day, regardless of the date on which the tenancy commenced or of any date on which any rent is to be paid.

(6) The party giving a notice to terminate a tenancy may, at any time before the expiry of the period of notice, revoke the notice with the consent of the other party.

(7) Where a party has given a notice to terminate the tenancy and subsequently realises that, because of—

- (a) Some error in the way in which the period of the notice or the date of the expiry of that period is expressed in the notice; or

(b) Some delay in serving the notice,—
the period of notice given is less than the minimum prescribed by subsection (1) or (as the case may require) subsection (2) of this section, that party may, with the agreement of the other party or (failing such agreement) with the consent of the Tribunal, give to the other party a further notice varying the

first notice so as to bring the period of notice given up to or above that minimum so required.

(8) Every notice given under subsection (7) of this section shall comply with the requirements of subsection (3) of this section.

(9) The Tribunal shall not give its consent under subsection (7) of this section unless it is satisfied—

- (a) That the error in the notice or the delay in serving the notice was inadvertent; and
- (b) That the party who gave the notice has sought to correct the matter as soon as practicable after realising that the period of notice given is inadequate; and
- (c) That it would not be unfair to the other party to allow the original notice to be varied in the manner proposed.

Cf. Residential Tenancies Act, 1978–1981 (South Australia), ss. 62, 64 (1) (ca), (2), 65, 69, 70

52. Provision for shorter notice may be made with consent of Tribunal—With the consent of the Tribunal, the parties to a tenancy agreement may provide for the termination of the tenancy by the giving of notice of a specified period (being less than that required by section 51 of this Act), or on the happening of any event to be specified in the agreement, or where the landlord requires possession of the premises for any purpose to be specified in the agreement.

53. Special provisions for notice terminating service tenancies—(1) Subject to the succeeding provisions of this section, the minimum period of notice required to be given by a landlord or a tenant to terminate a service tenancy, where either party has given notice to terminate the contract of service or that contract has been terminated, shall be 14 days.

(2) Where the contract of service is terminated, or the tenant is transferred to another district, on less than 14 days' notice, the landlord may terminate the service tenancy by the giving of notice of less than 14 days if—

- (a) The landlord believes on reasonable grounds that the tenant will cause substantial damage to the premises if the tenant is permitted to remain for 14 days; or
- (b) It is necessary for the conduct of the landlord's business where the tenant was employed that a replacement employee be appointed within less than 14 days and no suitable alternative accommodation is available for the replacement worker during the period of 14 days.

(3) No notice under this section shall have effect to terminate a service tenancy on a date preceding the date on which the termination of the contract of service or the transfer of the employee takes effect.

(4) Where the tenant of a service tenancy dies leaving any dependant residing in the premises, the minimum period of notice required to be given by the landlord to terminate the tenancy shall, subject to subsection (5) of this section, be 14 days.

(5) In any case to which subsection (4) of this section applies, the landlord may terminate the tenancy by the giving of notice of less than 14 days, but not less than 5 days, if it is necessary for the conduct of the landlord's business at the place of business where the tenant was employed that a replacement employee be appointed within less than 14 days and no suitable alternative accommodation is available for the replacement worker during the period of 14 days.

(6) Without limiting anything in subsections (2) to (5) of this section, in respect of a service tenancy granted by the Armed Forces to any person subject to the Armed Forces Discipline Act 1971, the landlord may terminate the tenancy by giving less than 14 days' notice if the operational requirements of the Armed Forces so require.

(7) In any proceedings before the Tribunal in which the validity of a notice purporting to have been given under this section is in issue, the following provisions shall apply:

- (a) Whether the contract of service was or was not terminated shall be a question of fact to be determined by the Tribunal, but the Tribunal shall not be concerned with the lawfulness or otherwise of that termination:
- (b) It shall be for the landlord to establish to the satisfaction of the Tribunal the matters referred to in paragraphs (a) and (b) of subsection (2), and in subsection (5), of this section:
- (c) In the case of a service tenancy granted by the Armed Forces to any person subject to the Armed Forces Discipline Act 1971, a certificate by the Secretary of Defence to the effect that operational requirements necessitated the giving of notice of less than 14 days shall be accepted by the Tribunal as conclusive proof of that matter.

54. Tribunal may declare retaliatory notice of no effect—(1) Within 14 working days after receipt of a notice terminating the tenancy, being a notice that complies with the

requirements of section 51 of this Act, the tenant may apply to the Tribunal for an order declaring that the notice is of no effect on the ground that, in giving the notice, the landlord was motivated wholly or partly by the exercise or proposed exercise by the tenant of any right, power, authority, or remedy conferred on the tenant by the tenancy agreement or by this or any other Act or any complaint by the tenant against the landlord relating to the tenancy.

(2) If, on any such application, the Tribunal is satisfied that the landlord was so motivated in giving the notice, it shall declare the notice to be of no effect unless the Tribunal is satisfied that the purported exercise by the tenant of any such right, power, authority, or remedy, or the making by the tenant of any such complaint, was or would be vexatious or frivolous to such an extent that the landlord was justified in giving the notice.

Cf. Residential Tenancies Act, 1978-1981 (South Australia), s. 66

55. Termination on non-payment of rent, damage, or assault—(1) Subject to subsection (2) of this section, on any application made to it under this section by the landlord, the Tribunal shall make an order terminating the tenancy if the Tribunal is satisfied that—

- (a) The rent was, at the date on which the application was filed under section 86 of this Act, at least 21 days in arrear; or
- (b) The tenant has caused, or has permitted any other person to cause, or has threatened to cause, substantial damage to the premises; or
- (c) The tenant has assaulted, or has threatened to assault, the landlord or any member of the landlord's family, or any agent of the landlord, or any occupier of any building of which the premises constitute a part, or any neighbour of the premises or of any such building.

(2) The Tribunal may refuse to make an order under subsection (1) of this section if, but only if, it is satisfied that the breach has been remedied (where it is capable of remedy), the landlord has been compensated for any loss arising from the breach, and it is unlikely that the tenant will commit any further breach of a kind to which this section applies.

(3) It shall not be necessary for the landlord to give to the tenant notice of the landlord's intention to apply under this section for an order terminating the tenancy.

56. Termination for other breach—On an application made to it under this section by the landlord or the tenant, the Tribunal may make an order terminating the tenancy if the Tribunal is satisfied that—

- (a) The other party has committed a breach of any of the provisions of the tenancy agreement or of this Act; and
- (b) In the case of a breach capable of remedy,—
 - (i) The applicant gave to the other party a notice specifying the nature of the breach complained of and requiring the other party to remedy the breach within a reasonable period, being not less than 10 working days commencing with the day on which the notice was given; and
 - (ii) The other party failed to remedy the default within the required period; and
- (c) That the breach is of such a nature or of such an extent that it would be inequitable to refuse to make an order terminating the tenancy.

57. Effect on subtenancy of termination of head tenancy—(1) Except as provided in subsections (2) and (3) of this section, where any premises are subject to a tenancy and one or more subtenancies, on the termination of the tenancy each subtenancy shall be deemed to be terminated.

(2) Where—

- (a) The landlord has consented to a subletting by the tenant to a subtenant; and
- (b) The landlord is giving to the tenant notice to terminate the tenancy in accordance with section 51 or section 52 of this Act,—

the landlord may, on the same date, give a copy of the notice to the subtenant, in which case the notice shall have effect to terminate the subtenancy on the date on which the tenancy will terminate.

(3) Subject to subsection (2) of this section, where the landlord gives to the tenant notice to terminate the tenancy in accordance with section 51 or section 52 of this Act, the following provisions shall apply in respect of each subtenancy to which the landlord has consented:

- (a) The subtenancy shall continue notwithstanding the giving or expiry of that notice:
- (b) For the purposes of sections 15 and 43 of this Act, the landlord under the tenancy shall be deemed to have acquired the sublandlord's interest under the

- subtenancy, and the provisions of those sections, with any necessary modifications, shall apply accordingly:
- (c) The landlord under the tenancy shall have the same rights (if any) as the sublandlord had under the subtenancy agreement or this Act to give notice terminating the subtenancy or to apply to the Tribunal for an order terminating the subtenancy or for an order for possession of the premises:
 - (d) If, on the expiry of the notice given in respect of the tenancy, the subtenancy is still subsisting, the subtenancy shall be deemed to be a tenancy granted by the landlord to the subtenant.

58. Mortgagee or other person becoming entitled to possession—(1) Where a mortgagee or other person becomes entitled (as against the landlord) to possession of the premises, the following provisions shall apply:

- (a) The tenancy shall continue notwithstanding that the mortgagee or other person has become entitled (as against the landlord) to possession of the premises:
 - (b) For the purposes of sections 15 and 43 of this Act, the mortgagee or other person shall be deemed to have acquired the landlord's interest in the premises, and the provisions of those sections, with any necessary modifications, shall apply accordingly:
 - (c) The mortgagee or other person shall have the same rights (if any) as the landlord had under the tenancy agreement or this Act to give notice terminating the tenancy or to apply to the Tribunal for an order terminating the tenancy or for an order for possession of the premises:
 - (d) Without limiting paragraph (c) of this section, but subject to paragraph (e) of this section, in the case of a fixed-term tenancy, the mortgagee or other person shall have the same right to give notice terminating the tenancy as the landlord would have had if the tenancy had been a periodic tenancy:
 - (e) Paragraph (d) of this section shall not apply where the mortgagee or other person is bound by the tenancy or consented in writing to its creation.
- (2) Subsection (1) of this section shall apply notwithstanding anything to the contrary in the Property Law Act 1952 or the Land Transfer Act 1952 or any other enactment.

Cf. Residential Tenancies Act, 1978–1981 (South Australia), s. 61 (1)(c) to (c2)

59. Destruction of premises—(1) Where, otherwise than as a result of a breach of the tenancy agreement, the premises are destroyed, or are so seriously damaged as to be uninhabitable,—

(a) The rent shall abate accordingly; and

(b) Either party may give notice to the other terminating the tenancy.

(2) Where a landlord gives notice of termination under subsection (1) of this section, the period of notice shall be not less than 7 days.

(3) Where a tenant gives notice of termination under subsection (1) of this section, the period of notice shall be not less than 2 days.

(4) Where, otherwise than as a result of a breach of the tenancy agreement, the premises are partially destroyed, or part of the premises is so seriously damaged as to be uninhabitable,—

(a) The rent shall abate accordingly; and

(b) Either party may apply to the Tribunal for an order terminating the tenancy, and the Tribunal may make such an order if it is satisfied that it would be unreasonable to require the landlord to reinstate the property or (as the case may require) to require the tenant to continue with the tenancy albeit at a reduced rent.

Cf. Residential Tenancies Act, 1978–1981 (South Australia), s. 71

60. Tenant remaining in possession after termination of tenancy—(1) Where a tenant remains in occupation of the premises after the tenancy has terminated or has been terminated, all the obligations of the tenant shall continue in force as if the tenancy were still subsisting until such time as the tenant ceases to occupy the premises.

(2) If the landlord permits the tenant to remain in the premises for more than 90 days after the tenancy has terminated or has been terminated, without obtaining a possession order, or for more than 90 days after obtaining a possession order, the landlord shall be deemed to have granted, and the tenant shall be deemed to have accepted, as from the date on which that period of 90 days expired, a periodic tenancy of the premises on the same terms and conditions as pertained to the original tenancy immediately before its termination.

(3) The landlord shall not be taken to have permitted the tenant to remain in possession, or to have given up the right to proceed under this Act in respect of any breach of the tenant's obligations, merely because the landlord accepts payment of rent in respect of any period after the tenancy has been terminated.

Cf. Residential Tenancies Act, 1978-81 (South Australia), s. 61 (2)

61. Abandonment of premises—(1) On the application of the landlord, the Tribunal may make an order terminating a tenancy where it is satisfied that the tenant has abandoned the premises and the rent is in arrear.

(2) Where the Tribunal makes an order under subsection (1) of this section in respect of a periodic tenancy, it shall determine, as best it can on the evidence before it, the date on which the landlord first became aware, or ought reasonably to have become aware, that the tenant had abandoned the premises, and shall specify that date in the order.

(3) A tenant who abandons the premises shall, notwithstanding any rule of law to the contrary, be liable to pay the rent for any period up to and including, but not after, the following date:

(a) In the case of a periodic tenancy,—

(i) The date of the expiry of the period of 21 days after the date specified by the Tribunal under subsection (2) of this section; or

(ii) The date of commencement of a new tenancy of the premises,—
whichever is the earlier:

(b) In the case of a fixed-term tenancy,—

(i) The date of the expiry of the term; or

(ii) The date of commencement of a new tenancy of the premises,—
whichever is the earlier.

(4) Nothing in section 49 of this Act shall impose upon the landlord any obligation, on finding that the tenant has abandoned the premises, to make an application under this section or to grant a new tenancy of the premises.

62. Abandoned goods—(1) Where, on the termination of the tenancy, the tenant leaves any of his or her goods on the premises, the following provisions shall apply:

(a) In the case of foodstuffs and other perishable goods, the landlord may, forthwith after taking possession of

- the premises, dispose of the goods in such manner as the landlord thinks fit:
- (b) In the case of other goods, the landlord shall, forthwith after taking possession of the goods,—
 - (i) Secure the goods in safe storage; and
 - (ii) Apply to the Tribunal for an order for the disposal of the goods:
 - (c) In any case to which paragraph (b) of this subsection applies, the Tribunal shall make an order—
 - (i) For the return of the goods to the tenant; or
 - (ii) Where that is not practicable, for the sale or other disposition of the goods:
 - (d) Neither the landlord nor any other person shall be liable in any way for any disposition of any goods made pursuant to paragraph (a) of this subsection or to an order of the Tribunal made under paragraph (c) of this subsection:
 - (e) The landlord shall be entitled to recover, out of any bond held in the Fund in respect of the tenancy or (to the extent that the bond is inadequate, taking into account any other claim the landlord may have against it) out of Part B of the Fund, all costs and expenses reasonably incurred by the landlord in respect of the storage or disposition of any goods pursuant to paragraph (a) or paragraph (b) of this subsection or to an order of the Tribunal made under paragraph (c) of this subsection:
 - (f) The amount recovered by the landlord out of Part B of the Fund in accordance with paragraph (e) of this subsection shall be deemed to be a debt due to the Corporation by the tenant and shall be recoverable accordingly.
- (2) Where any goods are sold pursuant to an order of the Tribunal made under subsection (1) (c) of this section, the following provisions shall apply:
- (a) The landlord shall not be liable to any other person in respect of the sale of the goods unless it is shown that, at the time of the sale, the landlord had reason to believe that the goods were not owned by the tenant:
 - (b) The goods shall not be recoverable from the purchaser unless it is shown that the purchaser acted otherwise than in good faith:
 - (c) The proceeds of sale shall be paid to the Corporation, and the Corporation shall—

- (i) Pay into Part B of the Fund an amount equivalent to the amount (if any) paid out of that Part to the landlord in accordance with subsection (1) (e) of this section; and
 - (ii) Pay the balance (if any) into Part A of the Fund:
- (d) Within 10 working days after the date of the sale, the landlord may apply to the Tribunal for an order for the payment to the landlord, out of the balance of the proceeds of sale (if any) paid into Part A of the Fund in accordance with subsection (2) (c) (ii) of this section, of any sum payable to the landlord by the tenant in excess of the amount of any bond held in the Fund in respect of the tenancy, and the Tribunal may make such an order accordingly:
- (e) Subject to any order made under paragraph (d) of this subsection, at any time within 1 year after the date of the sale, the tenant may apply to the Corporation for the payment to the tenant of so much of the proceeds of the sale as were paid by the Corporation into Part A of the Fund in accordance with paragraph (c) of this subsection.
- (3) Nothing in the preceding provisions of this section shall absolve the tenant from any responsibility imposed on the tenant by the tenancy agreement or by section 40 (1) (e) of this Act or by any rule of law to remove from the premises on the termination of the tenancy all goods owned by the tenant or of which the tenant is entitled to possession.

Cf. 1952, No. 50, s. 107B; 1975, No. 36, s. 7 (1); Residential Tenancies Act, 1978–1981 (South Australia), s. 79A

63. Entry without order of Tribunal prohibited—(1) No person shall enter into possession of any residential premises in the occupation of a tenant except with the consent of the tenant or pursuant to an order for possession made by the Tribunal and duly enforced in accordance with section 106 of this Act.

(2) Notwithstanding anything in section 57 of the Crimes Act 1961, every person who, otherwise than pursuant to a possession order duly enforced in accordance with section 106 of this Act, enters onto any land or into any land, being residential premises to which this Act applies, for the purpose of taking possession of that land or building without the consent of the tenant commits an offence and is liable to imprisonment for a term not exceeding 3 months or a fine not exceeding \$1,000.

Cf. Residential Tenancies Act, 1978–1981 (South Australia), s. 80

64. Possession orders—(1) Subject to subsection (2) of this section, on the application of any person entitled to possession of the premises following the termination of a tenancy, the Tribunal shall make an order granting possession of the premises to that person.

(2) No possession order may be made more than 3 months after the date of the termination of the tenancy.

(3) Every order of the Tribunal made under section 55 or section 56 or section 59 or section 61 of this Act terminating a tenancy shall have effect as a possession order granting possession of the premises to the landlord.

(4) No possession order (including an order of a kind referred to in subsection (3) of this section) shall be capable of being filed under section 106 of this Act more than 3 months after the date of the order.

65. Eviction of squatters—(1) Where, on the application of any person entitled to possession of any residential premises, the Tribunal is satisfied that any other person is in possession of the premises as a squatter or trespasser, or otherwise than pursuant to any right of occupation granted to that person by any person having lawful authority to grant that right to that other person, the Tribunal shall make a possession order granting possession of the premises to the applicant.

(2) Nothing in subsection (1) of this section shall limit or affect the provisions of the Trespass Act 1980, or any other remedy that may be available to the person lawfully entitled to possession of the premises.

66. Transitional provisions relating to protected tenancies—(1) If, within 12 months after the date of the commencement of this Act, a protected tenant is given notice terminating the tenancy, the tenant may, at any time before the expiry of the term of the notice, apply to the Tribunal for an order extending the tenancy.

(2) Subject to the succeeding provisions of this section, on an application made to it under subsection (1) of this section the Tribunal may make an order extending the tenancy until such date as it thinks fit, but being no later than the 1st day of February 1988.

(3) The Tribunal shall not make an order under this section if the landlord proves—

(a) That the tenant has committed any breach of a kind specified in section 55 of this Act; or

- (b) That suitable alternative accommodation is available to the tenant and it would not be unreasonable to expect the tenant to move to that accommodation; or
 - (c) That the hardship or injustice that may be caused to the landlord by extending the tenancy clearly outweighs the hardship or injustice that would be caused to the tenant by refusing to extend the tenancy.
- (4) In deciding whether or not to make an order under this section extending a tenancy, the Tribunal shall have regard to the following matters:
- (a) The age and state of health of the tenant:
 - (b) The tenant's means:
 - (c) Any other matters personal to the tenant, or to the landlord, that the Tribunal considers relevant.

PART III

THE TENANCY TRIBUNAL

Constitution and Administration

67. Constitution of Tribunal—(1) For the purposes of this Act there is hereby constituted a tribunal, to be called the Tenancy Tribunal.

(2) The Tribunal shall consist of—

- (a) One person, being a person who has held a required qualification for at least 5 years, who shall be appointed to be the Principal Tenancy Adjudicator:
- (b) One person, being a person who has held a required qualification for at least 5 years, who shall be appointed to be the Deputy Principal Tenancy Adjudicator:
- (c) Such number of other persons as may be required to ensure the efficient and expeditious exercise of the jurisdiction of the Tribunal throughout New Zealand, who shall be appointed to be Tenancy Adjudicators.

(3) Every Tenancy Adjudicator shall be appointed by the Governor-General on the recommendation of the Minister of Justice made after consultation with the Minister of Housing.

(4) No person who has attained the age of 70 years shall be eligible for appointment to the Tribunal.

(5) No person shall be eligible for appointment to the Tribunal unless that person—

- (a) Has a required qualification; or
- (b) Is, in the opinion of the Minister of Justice, otherwise capable by reason of special knowledge or experience of performing and exercising the duties, functions, and powers of a Tenancy Adjudicator.

(6) In recommending persons for appointment to the Tribunal under subsection (2) (c) of this section, the Minister of Justice shall ensure, so far as practicable, that—

- (a) There will be at least 1 Tenancy Adjudicator generally available to exercise the jurisdiction of the Tribunal at each of the places listed in the First Schedule to this Act; and
- (b) There will be sufficient Tenancy Adjudicators who have a required qualification to ensure the efficient and expeditious dispatch of those cases that are directed by the Principal Tenancy Adjudicator, under section 84 (3) of this Act, to be heard and determined by a Tenancy Adjudicator who has a required qualification, whether sitting alone or with any other Tenancy Adjudicator.

(7) The office of Tenancy Adjudicator shall not be held in conjunction with any office or employment in the Public Service, nor with any other office or employment that, in the opinion of the Minister of Justice, is inconsistent with the office of Tenancy Adjudicator.

(8) The duties, functions, and powers of the Tribunal shall not be affected by any vacancy in its membership.

(9) In this section, the term “a required qualification” means—

- (a) A practising certificate as a barrister or solicitor, or as both a barrister and solicitor, of the High Court of New Zealand; or
- (b) An equivalent qualification issued or recognised by the appropriate authority in any Commonwealth country, or in any other common law country or state.

68. Term of office of Tenancy Adjudicators—(1) Every Tenancy Adjudicator shall be appointed for a term not exceeding 3 years commencing on the date of the appointment or on such other date as may be specified in the instrument of appointment.

(2) Every Tenancy Adjudicator shall retire from office on attaining the age of 70 years.

(3) Any Tenancy Adjudicator may at any time be removed from office by the Governor-General for disability, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Governor-General.

(4) Any Tenancy Adjudicator may at any time resign by writing addressed to the Minister of Justice.

(5) Every Tenancy Adjudicator shall, unless sooner vacating office under subsection (3) or subsection (4) of this section,

continue in office pending the reappointment of that Tenancy Adjudicator or the appointment of a successor, notwithstanding the expiry of that Tenancy Adjudicator's term of office.

(6) Every person who was a Tenancy Adjudicator shall, notwithstanding the expiry of that Tenancy Adjudicator's term of office or that Tenancy Adjudicator's retirement or resignation from office, be deemed to continue to be a Tenancy Adjudicator for the purpose of finally disposing of any matter that was still before the Tribunal on the date of expiry of the term of office, or the effective date of the retirement or the resignation, of that Tenancy Adjudicator.

69. Remuneration of Tenancy Adjudicators—(1) There shall be paid to the Principal Tenancy Adjudicator and the Deputy Principal Tenancy Adjudicator remuneration by way of salary, fees, or otherwise, and allowances and expenses, at such rate as the Higher Salaries Commission may from time to time determine in accordance with the Higher Salaries Commission Act 1977.

(2) There shall be paid to each Tenancy Adjudicator (other than the Principal Tenancy Adjudicator and the Deputy Principal Tenancy Adjudicator) remuneration by way of salary, fees, or otherwise, and allowances and expenses, at such rate as the Minister of Finance, from time to time determines by written instrument, and different forms of remuneration and different rates may be so determined for different classes of Tenancy Adjudicators.

(3) The remuneration of a Tenancy Adjudicator shall not be diminished during the continuance of the Tenancy Adjudicator's appointment.

(4) Any determination under subsection (2) of this section, and any provision of any such determination, may be made so as to come into force on a date to be specified in that behalf in the determination, being the date of the making of the determination or any other date, whether before or after the date of the making of the determination.

(5) Every such determination, and every provision of any such determination, in respect of which no date is specified under subsection (4) of this section shall come into force on the date of the making of the determination.

70. Tenancy Adjudicators to be protected—Every Tenancy Adjudicator, in the performance of the Tenancy Adjudicator's duties under this Act, shall have and enjoy the same protection as Justices of the Peace acting in their criminal jurisdiction have and enjoy under Part VII of the Summary Proceedings Act 1957.

71. Conduct of Tribunal and stationing of Tenancy Adjudicators—(1) The Principal Tenancy Adjudicator shall be responsible for ensuring the orderly and expeditious discharge of the business of the Tribunal throughout New Zealand, and accordingly may, subject to subsection (2) of this section and to such consultation with the other Tenancy Adjudicators as is appropriate and practicable, give all such directions as are contemplated by the succeeding provisions of this section.

(2) Sittings of the Tribunal shall be held, as and when necessary for the dispatch of its business,—

(a) At the discretion of the Principal Tenancy Adjudicator, at each place, or at the nearest District Court to each place, specified in the First Schedule to this Act; and

(b) At such other places as the Principal Tenancy Adjudicator may from time to time direct.

(3) Each Tenancy Adjudicator shall be stationed at, and shall exercise the jurisdiction of the Tribunal in, such place or places as the Principal Tenancy Adjudicator may from time to time direct.

(4) Notwithstanding anything in subsections (2) and (3) of this section, the fact that a Tenancy Adjudicator sits in any particular place shall be conclusive evidence of that Tenancy Adjudicator's authority to do so, and no exercise of any jurisdiction or power by any Tenancy Adjudicator shall be questioned on the ground that the Tenancy Adjudicator was not stationed at, or authorised to exercise the jurisdiction of the Tribunal in, the place where the Tenancy Adjudicator exercised the jurisdiction or power.

(5) Sittings of the Tribunal for the dispatch of its business in any particular place shall, subject to any directions by the Principal Tenancy Adjudicator, be held on such days and at such times as may be appointed by the Tenancy Adjudicator, or one of the Tenancy Adjudicators, stationed at, and authorised to exercise the jurisdiction of the Tribunal in, that place.

72. Registrars—(1) For each of the places specified in the First Schedule to this Act, there shall be a Registrar, who shall be the Registrar of the nearest District Court or such other officer of the Department of Justice as the Secretary for Justice shall from time to time designate for the purpose.

(2) It shall be the responsibility of each Registrar—

(a) To arrange, in accordance with the instructions of the Secretary for Justice, for the provision of such secretarial and administrative services as may be

- necessary for the efficient and expeditious exercise of the Tribunal's jurisdiction at the place for which the Registrar is appointed; and
- (b) To ensure, in co-operation with the appropriate Tenancy Officer, that adequate arrangements are made 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
 - (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.

73. Seal of Tribunal—(1) The Tribunal shall have, in the custody of each Registrar, a seal which shall be the seal of the Tribunal and shall be used for sealing documents that require to be sealed, and any other document that any Tenancy Adjudicator elects to seal.

(2) The form of the seal shall be such as the Secretary for Justice from time to time determines.

(3) The seal of the Tribunal shall be judicially noticed by all courts and for all purposes.

74. Records of Tribunal—(1) Every Registrar shall be responsible for ensuring the safe custody of the records and papers of the Tribunal for the time being in the Registrar's possession or under the Registrar's control.

(2) Except where the Tribunal otherwise orders under section 95 (3) of this Act, the records and papers of the Tribunal shall be available for public inspection, on payment of the prescribed fee (if any), at all reasonable times.

(3) Any person may, on application to a Registrar and on payment of the prescribed fee (if any), require that Registrar to supply to that person a true copy of any record or paper of the Tribunal for the time being in the custody or under the control of that Registrar and available for public inspection.

(4) A certificate, given under the hand of a Tenancy Adjudicator or of any Registrar and sealed with the seal of the Tribunal, to the effect that any such copy is a true copy of the record or paper of the Tribunal to which it relates shall, in the absence of proof to the contrary, be sufficient evidence that it is a true copy of that record or paper.

75. Offices and Tenancy Officers—(1) There shall be an office of the Tribunal, within the office of the Corporation, at each of the places specified in the First Schedule to this Act.

(2) For each office of the Tribunal there shall from time to time be appointed under the State Services Act 1962 a Tenancy Officer, who shall be an officer of the Corporation.

(3) The principal functions of a Tenancy Officer shall be to supervise the operations of the office of the Tribunal and to work in close co-operation with the District Registrar and the Tenancy Mediators to ensure that disputes arising within the jurisdiction of the Tribunal are dealt with efficiently and expeditiously.

76. Tenancy Mediators—(1) For the purposes of this Act, there shall from time to time be appointed under the State Services Act 1962 a Principal Tenancy Mediator, and such number of Tenancy Mediators as may be required for the purposes of this Act.

(2) The Principal Tenancy Mediator, and every Tenancy Mediator appointed pursuant to subsection (1) of this section, shall be officers of the Corporation.

(3) Without limiting subsection (1) of this section, the Minister of Housing shall 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 Corporation is a party, and in such other cases as may from time to time be required.

(4) The Principal Tenancy Mediator shall be responsible for ensuring that the work of Tenancy Mediators throughout New Zealand is performed adequately and expeditiously.

(5) Tenancy Mediators shall have the following duties, functions, and powers:

(a) Where an application has been made for the exercise of the Tribunal's jurisdiction in respect of any dispute, to offer their services to the parties to the dispute and to assist the parties in bringing about a settlement:

(b) In giving such assistance, to inquire fully into any such dispute and all matters affecting its merits, and to make such suggestions and recommendations and do all such things as they think right and proper for inducing the parties to come to a fair and amicable settlement:

(c) To carry out, in respect of disputes arising within the jurisdiction of the Tribunal, all such directions as the Tribunal may think fit to give:

(d) Such other duties, functions, and powers as are conferred on Tenancy Mediators by this Act.

(6) No Tenancy Mediator shall have power to determine any matter in dispute, whether with or without a request by the parties.

(7) Subject to any directions of the Tribunal, no Tenancy Mediator shall have or exercise any duties, functions, or powers in respect of any dispute that is before the Tribunal.

(8) For the purposes of subsection (7) of this section, a dispute is before the Tribunal from the time when the Registrar receives notice of the dispute from the Tenancy Officer until the time when the Tribunal makes a final determination in respect of the dispute.

(9) In the performance of their duties, functions, and powers under this Act, Tenancy Mediators—

(a) Shall be subject to the directions of, and responsible solely to, the Tribunal, whether or not they are officers or employees of any of the State services; and

(b) Shall be entitled to immunity from suit in respect of any act or matter done or omitted to be done by them in good faith.

(10) Tenancy Mediators may perform and exercise their duties, functions, and powers at any place within New Zealand.

(11) In respect of any Tenancy Mediator appointed under subsection (3) of this section, the following provisions shall apply:

(a) The appointment shall be for a term not exceeding 3 years, but any such appointee may be reappointed from time to time:

(b) Any such appointee may be removed from office at any time by the Minister of Housing, and may at any time resign by notice addressed to the Minister of Housing:

(c) There shall be paid to every such appointee remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951; and the provisions of that Act shall apply accordingly as if every such appointee were a member of a statutory Board within the meaning of that Act.

Jurisdiction

77. Jurisdiction of Tribunal—(1) Subject to subsection (5) of this section, the Tribunal shall have jurisdiction to determine in accordance with this Act all disputes arising between

landlords and tenants in relation to any tenancy to which this Act applies or to which this Act did apply at any material time.

(2) Without limiting the generality of subsection (1) of this section, the Tribunal shall have jurisdiction to do the following things:

- (a) To determine whether any premises are or are not, or were or were not at any material time, residential premises to which this Act applies:
- (b) To determine whether there is or is not, or was or was not at any material time, a tenancy agreement to which this Act applies in force in respect of any residential premises, and to determine the terms of and the parties to any such agreement:
- (c) To determine whether any tenancy is or is not, or was or was not at any material time, a service tenancy:
- (d) To determine whether any rent that is, or that was at any material time, being charged in respect of any tenancy to which this Act applies does or does not or did or did not exceed the market rent for that tenancy by a substantial amount, and, where the rent does or did exceed the market rent by a substantial amount, to make such order relating to the rent as it thinks just:
- (e) Where any rent is, was, or will be required wholly or partly in a form other than money, to determine in monetary terms the value of the rent so required:
- (f) To determine whether or not any notice purporting to terminate a service tenancy was or was not authorised by any of the provisions of this Act and given in the form and manner prescribed by or under this Act:
- (g) To determine whether any person is or is not entitled to possession of any premises by virtue of any provision of any tenancy agreement to which this Act applies, or by virtue of any breach by any other person of any provision of any such tenancy agreement, or on the expiry of any such tenancy agreement, and to make an order for the recovery of the premises by any person who is entitled to possession:
- (h) Before the commencement of the tenancy, and on the application of either or both of the parties, to consent to the inclusion of any term in any tenancy agreement to which this Act applies, where the inclusion of that term would otherwise be contrary to any of the provisions of this Act:

- (i) During the tenancy, and on the application of both of the parties, consent to the inclusion of any term in any tenancy agreement to which this Act applies, where the inclusion of that term would otherwise be contrary to any of the provisions of this Act, and to make an order varying the agreement accordingly:
- (j) To order that a provision of this Act shall not apply to, or in relation to, any tenancy agreement or any residential premises, or shall apply in such modified form as the Tribunal may specify in the order:
- (k) To order the tenant under any tenancy agreement to which this Act applies to pay to the landlord any sum found to be owing by the tenant to the landlord, whether by way of rent in arrear or otherwise pursuant to the tenancy agreement, and to order the landlord under any such tenancy agreement to pay to the tenant the whole or any part of any sum found to have been paid by way of rent in excess of the amount lawfully payable, or of any other sum demanded or received by the landlord in contravention of any of the provisions of this Act:
- (l) To order the landlord or the tenant under any tenancy agreement to which this Act applies to do anything necessary to remedy the breach by that party of any express or implied provision of the tenancy agreement or any provision of this Act, or to do anything that that party is required to do by any such provision:
- (m) To order the landlord or the tenant under any tenancy agreement to which this Act applies to refrain from doing anything if the doing of that thing by that party would constitute a contravention or (as the case may require) a further contravention of any express or implied provision of the tenancy agreement or any provision of this Act:
- (n) To order the landlord or the tenant under any tenancy agreement to which this Act applies to pay to the other party such sum by way of damages or compensation as the Tribunal shall assess in respect of the breach of any express or implied provision of the tenancy agreement or any provision of this Act:
- (o) To consider and determine any complaint by any party to a tenancy agreement or by the Director-General that any person has committed an unlawful act, and, where it finds such a complaint to be proved, to order

the payment of such sum in the nature of exemplary damages, not exceeding the maximum prescribed by this Act, as the Tribunal may think just:

- (p) To approve the assignment by the tenant of the whole of the tenant's interest under any tenancy agreement to which this Act applies, or the subletting by the tenant under any such tenancy agreement of the whole or any part of the premises, where the Tribunal finds that the landlord has withheld consent unreasonably and the assignment or subletting is not absolutely prohibited by the tenancy agreement:
- (q) To make orders of a consequential or ancillary nature necessary to exercise or perfect the exercise of any of its jurisdiction.

(3) The Tribunal shall have jurisdiction to make an order for the recovery by any person of any residential premises to which this Act applies, or the eviction of any person from any such premises, regardless of the value of the premises or the amount of any rent payable for the premises.

(4) The Tribunal shall have and may exercise, in respect of tenancy agreements, all the jurisdiction and powers conferred on the High Court by section 120 of the Property Law Act 1952 (which relates to the granting of relief to the tenant against the landlord's refusal to grant a renewal of a tenancy agreement or to assign the landlord's interest in the premises).

(5) The Tribunal shall not have jurisdiction to require any landlord or any tenant under a tenancy agreement to which this Act applies to pay any sum, or to do any work to a value, or otherwise to incur any expenditure, in excess of \$12,000.

(6) Subsection (5) of this section shall not prevent a party to a tenancy agreement to which this Act applies from abandoning so much of a claim as exceeds \$12,000 in order to bring the claim within the jurisdiction of the Tribunal; and, in any such case, an order of the Tribunal under this Act in relation to the claim shall operate to discharge from liability in respect of the amount so abandoned any person against whom the claim and the subsequent order is made.

(7) The Tribunal shall have jurisdiction to hear and determine any claim arising under any tenancy agreement to which this Act applies, being a claim consisting of a balance, not exceeding \$12,000, after a set-off or any counterclaim made by the respondent against the claimant arising under the same tenancy agreement, being a counterclaim admitted by the claimant in the notice of claim.

(8) A cause of action shall not be divided into 2 or more claims for the purpose of bringing it within the jurisdiction of the Tribunal.

78. Orders of Tribunal—(1) Without limiting the generality of section 77 of this Act or the nature or extent of orders that the Tribunal may make in the exercise of its jurisdiction, the Tribunal may, in respect of any claim within its jurisdiction, make one or more of the following orders:

- (a) An order in the nature of a declaration, whether as to the status for the purposes of this Act of any premises or of any agreement or purported agreement, or as to the rights or obligations of any party, or otherwise:
 - (b) An order that a party yield possession of any premises to any other party:
 - (c) An order that a party deliver any specific chattels to any other party:
 - (d) An order that a party pay money to any other party:
 - (e) A work order:
 - (f) Where it appears to the Tribunal that an agreement between the parties, or any term of any such agreement, is harsh or unconscionable, or that any power conferred by an agreement between them has been exercised in a harsh or unconscionable manner, an order varying the agreement, or setting it aside (either wholly or in part):
 - (g) Where it appears to the Tribunal that an agreement between the parties has been induced by fraud, misrepresentation, or mistake, or that any writing purporting to express the agreement between the parties does not accord with their true agreement, an order varying, or setting aside, the agreement or the writing (either wholly or in part):
 - (h) Any other order that the High Court or a District Court may make under any enactment or rule of law relating to contracts:
 - (i) An order dismissing an application.
- (2) Where the Tribunal makes a work order against a party, it—
- (a) Shall, where the order is made otherwise than by consent; and
 - (b) May, where the order is made by consent,—
- at the same time make an order under subsection (1) (d) of this section to be complied with as an alternative to compliance with the work order.

(3) Any order made by the Tribunal may be unconditional or subject to such conditions (whether as to the time for, or mode of, compliance, or otherwise) as the Tribunal thinks fit to impose.

79. Jurisdiction to make interim orders—(1) In respect of any matter in which the Tribunal has jurisdiction under this Act to make any final determination, the Tribunal may from time to time, on application by any party whether made *ex parte* or otherwise, make any interim order of a mandatory or prohibitory nature designed to preserve the position of the parties pending the final determination of the matter.

(2) Where any such interim order is made on the *ex parte* application of any party, the other party may at any time apply to the Tribunal for the cancellation of that order.

80. Orders of Tribunal to be final—Subject to sections 105 and 117 to 120 of this Act, every order made by the Tribunal shall, unless it is expressed to be an interim order made under section 79 of this Act, be final and binding on all parties to the proceedings.

81. Exclusion of Tribunal's jurisdiction prohibited—(1) A provision in any tenancy agreement to which this Act applies, or in any other agreement entered into by the parties to any such tenancy agreement, to exclude or limit—

(a) The jurisdiction of the Tribunal; or

(b) The right of any person to invoke that jurisdiction—shall be of no effect.

(2) Without limiting the generality of subsection (1) of this section, the Tribunal shall have jurisdiction in respect of a claim notwithstanding any agreement relating to the matter that provides for—

(a) The submission to arbitration of any dispute or difference; or

(b) The making of an award upon such a submission to be a condition precedent to any cause of action accruing to a party to the agreement.

(3) Subsection (1) of this section does not apply where a cause of action has accrued, or is believed to have accrued, to a person and that person has agreed to the settlement or compromise of the claim based on that cause of action.

82. Exclusion of other jurisdictions—(1) Notwithstanding any other enactment or rule of law to the contrary, no court

or other body shall have originating jurisdiction in respect of any matter that is within the jurisdiction of the Tribunal unless—

(a) Proceedings in respect of that matter were commenced before that court or other body before the commencement of this Act; or

(b) An order is made under section 83 (2) of this Act.

(2) Where subsection (1) (a) of this section applies to proceedings before a court or other body, the issues in dispute in the claim to which those proceedings relate (whether as shown in the initial claim or emerging in the course of the hearing) shall not be the subject of proceedings between the same parties before the Tribunal unless the proceedings are transferred to the Tribunal under subsection (3) of this section, or the claim before the court or other body is withdrawn, abandoned, or struck out.

(3) In any case to which subsection (1) (a) of this section applies, the court or other body before which the proceedings were being conducted immediately before the date of the commencement of this Act may, with the consent of each of the parties, instead of determining the matter itself, order that the proceedings be transferred to the Tribunal subject to such provision (if any) as to the payment of costs as the court or other body thinks fit.

(4) Where proceedings are transferred to the Tribunal under subsection (3) of this section, the Tribunal may have regard to any notes of evidence transmitted to the Tribunal, and it shall not be necessary for that evidence to be given again before the Tribunal unless the Tribunal so requires.

83. Transfer of proceedings to District Court—(1) Where any proceedings have been commenced before the Tribunal that the Tribunal has no jurisdiction to hear and determine, the Tribunal may, instead of striking out the proceedings, order that they be transferred to a District Court in its ordinary civil jurisdiction.

(2) Where both parties to any proceedings that have been properly commenced before the Tribunal so request, the Tribunal may order that the proceedings be transferred to a District Court in its ordinary civil jurisdiction if the Tribunal is satisfied that the proceedings would be more properly determined in that Court.

(3) The Tribunal shall not make an order under subsection (1) or subsection (2) of this section in respect of a claim if any agreement of a kind described in section 81 (2) of this Act requires that the claim be submitted to arbitration.

(4) Any proceedings transferred to a District Court under this section shall be deemed to have been commenced by action in that Court, and shall be dealt with by that Court accordingly.

84. Jurisdiction of Tribunal generally exercisable by any Tenancy Adjudicator—(1) Subject to the succeeding provisions of this section, any Tenancy Adjudicator sitting alone, or any 2 or more Tenancy Adjudicators sitting together, may exercise all or any of the jurisdiction and powers of the Tribunal.

(2) The Principal Tenancy Adjudicator may from time to time direct that any particular case or any particular class of cases shall be heard by any particular Tenancy Adjudicator or Adjudicators, or by any particular class of Tenancy Adjudicators, or by any specified number of members, of the Tribunal.

(3) Without limiting subsection (2) of this section, the Principal Tenancy Adjudicator may direct that any particular case shall be heard by a Tenancy Adjudicator who has a qualification of a kind described in section 67 (9) of this Act, either sitting alone or with any other Tenancy Adjudicator or Tenancy Adjudicators, where the Principal Tenancy Adjudicator believes that the case raises or may raise important or difficult questions of law.

85. Manner in which jurisdiction is to be exercised—

(1) Subject to the provisions of this Act and of any regulations made under this Act, the Tribunal shall exercise its jurisdiction in a manner that is most likely to ensure the fair and expeditious resolution of disputes between landlords and tenants of residential premises to which this Act applies.

(2) The Tribunal shall determine each dispute according to the general principles of the law relating to the matter and the substantial merits and justice of the case, but shall not be bound to give effect to strict legal rights or obligations or to legal forms or technicalities.

Procedure

86. Filing of applications—(1) Proceedings before the Tribunal shall be commenced by the filing of an application in the prescribed form, together with the prescribed fee, (if any) with the appropriate office of the Tribunal.

(2) The appropriate office of the Tribunal for the purpose of subsection (1) of this section is that which is nearest by the most practicable route to the residential premises to which the dispute relates.

87. Duties of Tenancy Officer on receipt of application—

(1) When an application is filed in accordance with section 86 of this Act, the Tenancy Officer shall refer it to a Tenancy Mediator unless, in terms of any regulations made under this Act or of any directions given by the Principal Tenancy Adjudicator, the application is of a class that is to be referred directly to the Tribunal, in which case the Tenancy Officer shall refer the application to the Registrar of the Tribunal.

(2) Notwithstanding anything in subsection (1) of this section, where either party informs the Tenancy Officer that that party refuses to have the matter considered by a Tenancy Mediator, the Tenancy Officer shall refer the application to the Registrar of the Tribunal.

88. Functions of Tenancy Mediators—(1) The primary function of a Tenancy Mediator in respect of an application referred to the Tenancy Mediator under section 87 of this Act is to attempt to bring the parties to the dispute to an agreed settlement.

(2) Where an agreed settlement is reached, the Tenancy Mediator may, to give effect to the settlement, make any order or orders that the Tribunal could have made if the application had come before it.

(3) If it appears to the Tenancy Mediator that it is unlikely that an agreed settlement can be reached within a reasonable time, the Tenancy Mediator—

(a) Shall report accordingly to the Tenancy Officer who shall refer the application to the Registrar for determination by the Tribunal; and

(b) Shall, wherever practicable, after consultation with the Tenancy Officer and the Registrar, inform the parties of the date on which the Tribunal is likely to be able to hear the matter.

(4) In any case to which subsection (3)(a) of this section applies, the Tenancy Mediator may include in his or her report to the Tenancy Officer any statement of facts agreed to by the parties, a summary of the points settled in mediation and those still requiring determination by the Tribunal, and any comments that the Tenancy Mediator may wish to make on the conduct of the parties so far as that may be relevant to the question of costs before the Tribunal in accordance with section 102 (2)(c) of this Act, but shall in all respects strictly observe the provisions of sections 89 and 90 of this Act.

(5) Where a Tenancy Mediator makes any order to give effect to an agreed settlement, any party may file in the appropriate

office of the Tribunal a copy of the order with a request that it be sealed, and, except in a case to which subsection (6) of this section applies, a Tenancy Adjudicator shall seal the copy of the order accordingly.

(6) Where that Tenancy Adjudicator believes that the order made by the Tenancy Mediator is outside the powers of the Tenancy Mediator to make, the Tenancy Adjudicator shall, instead of sealing the copy of the order,—

- (a) Decline to seal the order, and refer the matter back to the Tenancy Mediator with such directions as the Tenancy Adjudicator may think fit; or
- (b) Direct that the matter be reconsidered and determined by the Tribunal.

(7) Where any copy of an order made by a Tenancy Mediator is sealed under this section, it shall have effect as an order of the Tribunal, and shall be enforceable accordingly.

89. Statements made in mediation to be subject to privilege—(1) This section applies to any oral or written statement (including a statement contained in a document) made in the course of, and for the purposes of or in connection with, the mediation by a Tenancy Mediator of any dispute.

(2) No action in defamation shall lie against any person in respect of any statement to which this section applies.

(3) No evidence of any statement to which this section applies shall be admissible in any proceedings before any court or tribunal, or any person acting judicially.

(4) Nothing in subsection (3) of this section shall apply if—

- (a) The parties to the dispute consent to the admission of the statement; or
- (b) The statement is otherwise admissible in any criminal proceedings and the defendant in those proceedings adduces it; or
- (c) The statement is otherwise admissible in any criminal proceedings in which a person is charged with an offence—
 - (i) Against the person; or
 - (ii) Against rights of property; or
 - (iii) Of threatening, conspiring, or attempting to commit an offence against the person or against rights of property,—

being an offence arising from an act or omission occurring after the statement was made; or
- (d) The statement is otherwise admissible in any criminal proceedings in which a person is charged with an offence arising from the making of the statement.

90. Tenancy Mediator to observe confidentiality—

(1) Every Tenancy Mediator commits an offence and is liable to a fine not exceeding \$500 who discloses to any other person any information or statement received by or made to the Tenancy Mediator in the course of, and for the purposes of or in connection with, the mediation of any dispute.

(2) Nothing in subsection (1) of this section shall apply if—

- (a) The person from whom the information is received or by whom the statement is made consents to the disclosure; or
- (b) There are reasonable grounds to believe that disclosure is necessary to prevent or minimise the danger of injury to any person or damage to any property; or
- (c) The information or statement is given in evidence pursuant to section 89 (4) of this Act; or
- (d) The disclosure is reasonably required for the purpose of facilitating the mediation.

91. Notice of hearing by Tribunal—(1) Where any application is referred to, or directed to be reconsidered and determined by, the Tribunal under section 87 or section 88 of this Act, the Tribunal shall cause to be given to each party to the dispute reasonable notice of the time, place, and purpose of the hearing to be held in respect of the application.

(2) The notice of the hearing shall be in writing, and shall include the following:

- (a) A statement of such particulars as will fairly inform the party to whom it is given of the substance of the matters to be dealt with at the hearing;
- (b) A reference to the relevant provision of the Act or regulations under the authority of which the hearing will be held;
- (c) A statement of where information on the procedure of the Tribunal may be obtained;
- (d) A statement warning each party to whom the notice is given that if that party does not attend the hearing, the Tribunal may proceed to determine the matter in that party's absence.

92. Non-attendance at hearing after due notice—Where notice of a hearing has been given to a party in accordance with section 91 of this Act and that party does not attend at the hearing, the Tribunal may hear and determine the matter in the absence of that party.

93. Right of audience—(1) At any hearing before the Tribunal, every party shall be entitled to attend and be heard, to call evidence, and to examine, cross-examine, and re-examine witnesses.

(2) Except as provided in the succeeding provisions of this section, no party shall be entitled to be represented at the hearing by counsel or by a representative, except where—

- (a) The other party consents; or
- (b) The amount in dispute exceeds \$3,000; or
- (c) The other party is, or the other party's case is being conducted by, the Director-General acting under section 124 of this Act.

(3) The Tribunal may allow any party to be represented by counsel if it considers that it would be appropriate to do so, having regard to—

- (a) The nature and complexity of the issue involved; or
- (b) Any significant disparity between the parties affecting their ability to represent their respective cases.

(4) Where any party to any proceedings before the Tribunal is represented by counsel, any other party to those proceedings may be represented by counsel.

(5) The following parties may be represented by a representative who is approved by the Tribunal:

- (a) The Crown, if the representative is an officer or employee of the Crown;
- (b) A corporation or an unincorporated body of persons, if the representative is an officer or employee or a member of the corporation or body or holds a majority interest in it;
- (c) A person jointly liable or entitled with another or others, if the representative is one of the persons jointly liable or entitled or, in the case of a partnership, is an employee of those persons;
- (d) A minor, or other person under disability;
- (e) Any other person, if the Tribunal is satisfied that for sufficient cause that person is unable to appear in person or is unable to present his or her case adequately.

(6) Where a representative of a party is proposed for the Tribunal's approval, the Tribunal shall satisfy itself that the person proposed has sufficient knowledge of the case and sufficient authority to bind the party.

(7) The Tribunal shall not appoint under section 94 (2) (a) of this Act, or approve under this section, as a representative of a party a person who is or has been enrolled as a barrister

and solicitor, or who, in the opinion of the Tribunal, is, or has been, regularly engaged in advocacy work before other tribunals; but this prohibition does not apply where—

- (a) The person proposed for approval is a person or one of the persons jointly liable or entitled with another or others; or
- (b) The party seeking to be represented is a company and the person proposed for approval is the majority shareholder of the company.

94. Minors and persons under disability—(1) Subject to this section, a minor may be a party to, and shall be bound by, proceedings before the Tribunal as if the minor were a person of full age and capacity.

(2) Where a minor is a party to any proceedings before the Tribunal, the Tribunal may, if it considers it would be in the interests of the minor to do so,—

- (a) At any time appoint to represent the minor a person who is willing to do so and who is not disqualified by section 93 (7) of this Act, and authorise that person to control the conduct of the minor's case; or
- (b) When approving a representative under section 93 (5) of this Act or at any time thereafter, authorise that representative to control the conduct of the minor's case.

(3) In any proceedings before the Tribunal,—

- (a) The manager of the estate of a protected patient under the Mental Health Act 1969 shall, subject to that Act, control the conduct of the protected patient's case:
- (b) The manager of the estate of a protected person under the Aged and Infirm Persons Protection Act 1912 shall, subject to that Act, control the conduct of the protected person's case so far as the proceedings relate to the protected estate.

(4) A person who is empowered by or under this section to control the conduct of the case of another person may do all such things in the proceedings as the person so empowered could do if that person were a party to the proceedings in place of that other person.

(5) Nothing in this section shall restrict the application of section 12 of the Minors Contracts Act 1969 to—

- (a) A settlement agreed to by or on behalf of a minor; or
 - (b) A payment made or proposed to be made by, or on behalf of, or to, or for the benefit of, a minor,—
- after proceedings have been commenced before the Tribunal.

- (6) In this section “proceedings before the Tribunal” means—
- (a) Proceedings before the Tribunal or on appeal from the Tribunal; and
 - (b) A settlement agreed to in the course of any proceedings before the Tribunal or on appeal from the Tribunal; and
 - (c) Proceedings under section 108 of this Act for enforcement of a work order of the Tribunal;—
- and also includes any order made in any such proceedings.

95. Proceedings usually to be in public—(1) Except as provided in subsection (2) of this section, the proceedings of the Tribunal shall be conducted in public.

(2) The Tribunal may, on the application of any party to the proceedings, and after having due regard to the interests of the parties and to the public interest, order that the whole or any part of the hearing shall be held in private.

(3) The Tribunal may, on the application of any party to the proceedings, and after having due regard to the interests of the parties and to the public interest, make an order prohibiting the publication of any report or description of the proceedings or of any part of the proceedings at any hearing before it (whether held in public or in private); but no such order shall prohibit the publication of any decision of the Tribunal.

(4) Notwithstanding any order made under subsection (3) of this section, the Tribunal may permit a report or description of the proceedings or of any part of the proceedings to be included in any publication that is of a bona fide professional or technical nature.

96. Further provisions relating to procedure generally—

(1) The Tribunal may adjourn a hearing at any time and from time to time and place to place, upon the application of either party to the proceedings or of its own motion, and on such terms as it thinks fit.

(2) The Tribunal may, on the application of any party to any proceedings before the Tribunal,—

(a) Extend any time limit; or

(b) If it is satisfied that the other party will not be prejudiced thereby, waive compliance by the applicant with any other procedural requirement,—

prescribed by or under this Act and relating to the proceedings.

(3) The Tribunal may extend any such time limit notwithstanding that the application for the extension is not made until after the expiration of the time appointed or fixed.

(4) Except as expressly provided in this Act or in any regulations made under this Act, the Tribunal may regulate its own procedure in such manner as it thinks fit.

(5) Subject to the provisions of this Act and of any regulations made under this Act, and to any directions of the Principal Tenancy Adjudicator, the Tenancy Adjudicator who is sitting in any particular case, or, where 2 or more Tenancy Adjudicators are sitting, the Tenancy Adjudicator who is presiding, may give all such directions and do all such things as are necessary or desirable for the expeditious and just hearing and determination of the case.

97. Evidence—(1) The Tribunal shall not have the power to administer an oath but may require a person giving evidence at a hearing to make a statement promising to tell the truth.

(2) Where a witness is required to make such a statement under subsection (1) of this section, a Tenancy Adjudicator or an officer of the Tribunal shall put to the witness the following questions, or words of similar effect, to which the witness shall indicate assent:

“Do you promise to tell the truth? And do you understand that if you fail to tell the truth you will be liable to prosecution for giving false evidence?”

(3) The Tribunal may permit a party or witness to give evidence by tendering, or tendering and reading, a written statement and, if the Tribunal so requires, stating it to be the truth.

(4) Subject to section 89 of this Act, the Tribunal may call for and receive as evidence any statement, document, information, matter, or thing that in its opinion may assist it to deal effectually with the matters before it, whether or not the same would be admissible in a court of law.

(5) The Tribunal may in any proceedings make use of any facts that may be judicially noticed.

(6) The Tribunal shall have power to refuse to accept any evidence or submission that is irrelevant or repetitious.

(7) Without limiting section 101 of this Act, every person appearing before the Tribunal shall have the same privileges as witnesses have in courts of law in relation to the following matters:

- (a) The giving of any evidence and the answering of any questions:
- (b) The giving to the Tribunal of any information or statement:
- (c) The production to the Tribunal of any document or thing.

98. Witness summons—(1) For the purposes of a hearing before the Tribunal, the Tribunal may of its own motion, and shall on the application of any party to the proceedings, issue in writing a witness summons requiring the person named in the witness summons to attend before the Tribunal and to give evidence, or to produce any document or thing in that person's possession or under that person's control, relevant to the proceedings.

(2) The power to issue a witness summons under subsection (1) of this section may be exercised by the Tribunal, or by the Registrar acting by the direction, or with the authority, of the Tribunal.

(3) A witness summons shall be served at least 5 working days before the date on which the attendance of the witness is required, unless in special circumstances the Tribunal directs otherwise.

(4) Every witness attending a hearing of the Tribunal pursuant to a witness summons shall be entitled to a sum for that witness's travelling allowances, travelling expenses, and fees at the rate for the time being prescribed, except that, in any particular case, the Tribunal may disallow the whole or any part of that sum if it considers it just to do so.

(5) The allowances, travelling expenses, and fees payable to a witness pursuant to subsection (4) of this section shall be paid by such party or parties to the proceedings as the Tribunal shall order or, if the Tribunal so decides, shall be paid out of money appropriated by Parliament for the purpose.

(6) A witness summons may be set aside by the Tribunal or by the Principal Tenancy Adjudicator if the Tribunal or the Principal Tenancy Adjudicator considers that the summons relates to documents in respect of which any person may have a claim of privilege against disclosure, or that the summons is oppressive, whether because it is too wide or too uncertain or because of lack of time for the person served with the summons to have a reasonable opportunity to comply with it, or for any other reason.

(7) Every witness summons shall include a statement informing the person summoned of the right to apply to the Tribunal under subsection (6) of this section to have the summons set aside on the ground that it relates to privileged documents or that compliance with it would be oppressive to that person.

99. Tribunal may require inquiry and report by Tenancy Mediator—(1) The Tribunal may, at any stage of any

proceedings before it, require a Tenancy Mediator (not being one who has acted in any mediation of the dispute to which the proceedings relate) to inquire into, and report in writing to the Tribunal upon, any matter of fact having a bearing upon the proceedings, and may give to the Tenancy Mediator all such directions as to the nature, scope, and conduct of the inquiry as the Tribunal thinks fit.

(2) Without limiting subsection (1) of this section, where, during any proceedings before it, the Tribunal is satisfied that the parties may be brought to an agreed settlement in respect of any matter in issue with the assistance of independent mediation, the Tribunal may refer the matter in dispute to a Tenancy Mediator accordingly; and the provisions of subsections (2) to (7) of section 88 of this Act, with any necessary modifications, shall apply, except that, if an agreed settlement is not reached the Tenancy Mediator shall report to the Registrar rather than to the Tenancy Officer.

100. Tenancy Mediator or Tribunal may require valuer's report in certain proceedings—A Tenancy Mediator or the Tribunal may, at any stage of any proceedings under section 25 of this Act, require the Corporation to obtain and submit to the Tenancy Mediator or the Tribunal a report by a registered valuer who—

- (a) Is not employed by the Corporation, in any case where the Crown or any instrument of the Crown or the Corporation is a party; or
- (b) Is employed or engaged by the Corporation, in any other case.

101. Protection of persons appearing, etc.—(1) All parties, counsel, representatives, and witnesses in any proceedings before the Tribunal shall have and enjoy the same privileges and immunities as they would have had if the proceedings were held in a court.

(2) The privileges and immunities referred to in subsection (1) of this section shall extend and apply to—

- (a) Every Tenancy Mediator in the exercise of any power or jurisdiction under any of the provisions of this Act; and
- (b) Any other person in respect of any dealings with any Tenancy Mediator.

102. Costs—(1) Except in a case to which subsection (2) of this section applies, the Tribunal shall have no power to award costs to or against any party to proceedings before it.

(2) The Tribunal may make an order of a kind referred to in subsection (3) of this section in any of the following cases:

(a) Where, in the opinion of the Tribunal, the proceedings are frivolous or vexatious:

(b) Where any of the parties was represented by counsel:

(c) Where, in the opinion of the Tribunal, the matter in dispute ought reasonably to have been settled before the Tenancy Mediator but that the party against whom the order is to be made refused, without reasonable excuse, to take part in proceedings before a Tenancy Mediator or acted in any such proceedings in a contemptuous or improper manner.

(3) In any case to which subsection (2) of this section applies, the Tribunal may order a party to pay—

(a) To the Crown, the fees and expenses of any witness that have been paid or are payable by the Crown; or

(b) To another party, the reasonable costs of that other party in connection with the proceedings.

103. Reference of questions of law to High Court—The Tribunal may state a case for the opinion of the High Court on any question as to the jurisdiction of the Tribunal or on any question of law arising in proceedings before it; and for that purpose the Tribunal may either conclude the proceedings subject to that opinion, or adjourn the proceedings until after that opinion is given.

104. Decision of Tribunal—(1) The Tribunal shall give its final decision in any proceedings, together with its reasons for the decision, in writing.

(2) The Tribunal shall provide both parties to the proceedings with a copy of its decision and its reasons for the decision, and with written notice of the rights of appeal (if any) against its decision, including any time limits on those rights.

105. Rehearings—(1) The Tribunal shall in all proceedings have the power to order a rehearing of the whole or any part of the proceedings on the ground that a substantial wrong or miscarriage of justice has or may have occurred or is likely to occur.

(2) An application for a rehearing shall be lodged with the appropriate Registrar of the Tribunal within 5 working days after the date of the decision, or within such further time as the Tribunal may allow.

(3) A copy of an application for a rehearing under this section shall be sent by the Tribunal to the other party to the proceedings as soon as practicable after it has been lodged with the Tribunal.

(4) An application for a rehearing under this section shall not operate as a stay of proceedings unless the Tribunal so orders.

(5) The Tribunal may grant an application for a rehearing under this section on such terms as it thinks fit, and may in the meantime stay proceedings.

(6) Nothing in this section shall apply to proceedings under section 25 of this Act.

Enforcement and Offences

106. Enforcement of possession orders—(1) Every possession order shall, on being filed in the appropriate District Court, have effect as if it were a warrant for the recovery of the premises issued by the Registrar of the Court under the District Courts Act 1947.

(2) Where any such order is filed in a District Court, section 79 (5) of the District Courts Act 1947 shall apply as if the reference to a District Court Judge were a reference to a Tenancy Adjudicator.

107. Enforcement of orders other than possession orders and work orders—(1) Every order made by the Tribunal other than a possession order or a work order shall be deemed to be an order of the District Court, and, subject to this section, may be enforced accordingly.

(2) Where application is made to a District Court for the issue of any process to enforce an order provided for by section 78 (2) of this Act (requiring a party to pay money to another as an alternative to compliance with a work order), the Registrar shall give written notice of the application to the party against whom enforcement is sought.

(3) If that party does not file in the Court, within 10 working days after receiving notice of the application, a notice of objection in the prescribed form, the order may, after the expiry of that period, be enforced pursuant to subsection (1) of this section.

(4) The notice referred to in subsection (3) of this section may be given only on the ground that it is the belief of the party giving it that the order of the Tribunal has been fully complied with and that the party therefore disputes the entitlement of the applicant to enforce it.

(5) If the party against whom enforcement is sought files the notice referred to in subsection (3) of this section within the prescribed time, the Registrar shall refer the matter to the Tribunal to be heard and determined under section 108 (2) of this Act.

(6) The Corporation may advance to any person who seeks to enforce an order pursuant to subsection (1) of this section the amount of any filing fee payable by that person; and, where the Corporation does make any such advance, the amount of the advance shall be recoverable from the other party for the credit of Part B of the Fund.

108. Enforcement of work orders—(1) Where—

- (a) A party in whose favour a work order has been made considers that the work order has not been complied with by the other party; and
- (b) That other party has not complied with the alternative money order provided for by section 78 (2) of this Act,—

the party in whose favour the work order was made may, instead of applying to the District Court for the issue of a process of enforcement pursuant to section 107 (1) of this Act, lodge with the Tribunal an application for the enforcement of the work order.

(2) Subsequent proceedings shall be taken on an application for enforcement under subsection (1) of this section, and on a notice under section 107 (5) of this Act, as if such application or notice were an application filed under section 86 of this Act; and, upon the hearing of the matter, the Tribunal may—

- (a) Vary the work order, or make a further work order or any other order that is authorised by section 78 of this Act; or
- (b) Grant leave to the party in whose favour the work order was made to enforce the alternative money order provided for by section 78 (2) of this Act, or so much of that order as the Tribunal may allow, without compliance with the provisions of section 107 (2) of this Act; or
- (c) Make an order empowering the party in whose favour the work order was made to undertake the necessary work and to charge the cost of doing so (up to the amount specified by the Tribunal) to the other party; or
- (d) Discharge or amend any order previously made by the Tribunal.

(3) Where any order is made under subsection (2) (c) of this section—

(a) In favour of the landlord, the cost incurred by the landlord in undertaking the work (up to the amount specified by the Tribunal) shall be deemed to be rent in arrear and enforceable accordingly; or

(b) In favour of the tenant, the tenant may set off the cost incurred in undertaking the work (up to the amount specified by the Tribunal) against rent payable by the tenant.

(4) Without limiting subsection (3) (b) of this section, where any order is made under subsection (2) (c) of this section, the tenant may pay to the Corporation any sum that would otherwise be payable by way of rent, up to the amount specified by the Tribunal, until sufficient has been accumulated to enable the tenant to undertake the work.

(5) Where any sum is paid to the Corporation under subsection (4) of this section, the Corporation shall give to the tenant a receipt showing the particulars of the payment, and shall send a copy of the receipt to the landlord.

(6) Any money paid to the Corporation under subsection (4) of this section shall be paid by the Corporation into Part A of the Fund, and shall be paid out of that Part by the Corporation to the tenant if the Corporation is satisfied that the money is to be applied by the tenant to meet the cost of the work.

(7) After the expiration of 12 months from the date of a work order, it shall not be enforced without the leave of the Tribunal.

109. Unlawful acts—(1) A landlord or a tenant, or the Director-General acting on behalf of a landlord or a tenant, or the Director-General acting as the person responsible for the general administration of this Act, may apply to the Tribunal for an order requiring any other person to pay to the applicant an amount in the nature of exemplary damages on the ground that that other person has committed an unlawful act.

(2) No application may be made under subsection (1) of this section later than 12 months after the date of the commission of the unlawful act.

(3) If, on such an application, the Tribunal is satisfied that the person against whom the order is sought committed the unlawful act intentionally, and that, having regard to—

(a) The intent of that person in committing the unlawful act; and

- (b) The effect of the unlawful act; and
- (c) The interests of the landlord or the tenant against whom the unlawful act was committed; and
- (d) The public interest,—

it would be just to require the person against whom the order is sought to pay a sum in the nature of exemplary damages, the Tribunal may make an order accordingly.

(4) The maximum amount that a person may be ordered by the Tribunal to pay under this section shall be as follows:

- (a) In the case of any unlawful act to which section 12 (3) of this Act applies, \$2,000:
- (b) In the case of any unlawful act to which section 33 (2) or section 38 (3) of this Act applies, \$1,000:
- (c) In the case of any unlawful act to which section 17 (3) or section 18 (4) or section 19 (2) or section 23 (4) or section 34 (2) or section 46 (3) or section 48 (4) or section 137 (2) of this Act applies, \$500:
- (d) In the case of any unlawful act to which section 27 (2) or section 29 (5) or section 30 (2) of this Act applies, \$100.

(5) Any amount ordered by the Tribunal to be paid under this section on the application of a landlord or a tenant, or on the application of the Director-General acting on behalf of a landlord or a tenant, shall be paid to that landlord or that tenant, and shall be in addition to any sum payable to that landlord or that tenant by way of compensation in respect of the unlawful act.

(6) Any amount ordered by the Tribunal to be paid under this section on the application of the Director-General acting as the person responsible for the general administration of this Act shall be paid into Part B of the Fund.

110. Failing to answer witness summons—(1) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 who, having been summoned to attend to give evidence before the Tribunal or to produce to the Tribunal any document or thing, without reasonable cause,—

- (a) Fails to attend in accordance with the summons; or
- (b) Refuses to promise to tell the truth, or refuses to give evidence, or refuses to answer any question that the person is lawfully required by the Tribunal to answer concerning the subject of the proceedings; or
- (c) Fails to produce any such document or thing lawfully required to be produced.

(2) No person who is summoned shall be convicted of an offence against subsection (1) of this section unless at the time of the service of the summons, or at some other reasonable time before the date on which that person was required to attend, there has been paid or tendered to that person a sum for travelling expenses according to the scale for the time being prescribed.

111. Giving false evidence—Every person commits an offence and is liable on indictment to imprisonment for a term not exceeding 3 years who, after promising to tell the truth pursuant to section 97 (2) of this Act, makes any assertion as to a matter of fact, opinion, belief, or knowledge knowing that assertion to be false and intending thereby to mislead the Tribunal.

112. Contempt—(1) If any person—

- (a) Intentionally insults a Tenancy Adjudicator or an officer of the Tribunal, or a witness attending before the Tribunal, at any hearing of the Tribunal; or
- (b) Intentionally interrupts the proceedings of the Tribunal or otherwise misbehaves at any hearing of the Tribunal; or
- (c) Intentionally and without lawful excuse disobeys any order or direction of the Tribunal in the course of any hearing of the Tribunal,—

the Registrar or any other person authorised by the Tribunal, with or without the assistance of any member of the Police or any other person, may, by order of the Tribunal, remove that person from the presence of the Tribunal.

(2) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 who—

- (a) Resists an attempt to remove him or her under subsection (1) of this section; or
- (b) Having been removed under that subsection, returns without the permission of the Tribunal.

(3) Notwithstanding anything in section 93 of this Act, where any party to the proceedings is removed under this section the proceedings may be continued in the absence of that party.

Miscellaneous Provisions

113. Tenancy Officers to provide assistance—Every Tenancy Officer shall ensure that assistance is reasonably available from himself or herself or 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 of this Act, 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.

114. Powers of entry of Tenancy Mediators—(1) Subject to the succeeding provisions of this section, every Tenancy Mediator shall, in the performance of his or her functions under section 99 (1) of this Act in relation to any dispute, have power at any reasonable time to enter the residential premises to which the dispute relates and to inspect those premises and any fixtures, fittings, and chattels in those premises.

(2) In respect of premises in any defence area (within the meaning of the Defence Act 1971), the exercise by a Tenancy Mediator of the power conferred by subsection (1) of this section shall be subject to such conditions relating to security as the officer in charge of the defence area may require.

(3) Except with the written authority of the Tribunal given in any particular case, no Tenancy Mediator shall exercise the power conferred by subsection (1) of this section without first giving to each party to the dispute at least 24 hours' written notice of intention to do so.

(4) Every notice given under subsection (3) of this section shall state—

- (a) That it is given pursuant to this section; and
- (b) The address of the premises to which it relates; and
- (c) The time at which and the date on which the Tenancy Mediator proposes to inspect the premises.

(5) Any party to the dispute shall be entitled to accompany, or have an agent accompany, the Tenancy Mediator while the Tenancy Mediator is inspecting the premises, whether or not that party would otherwise be entitled to enter or be in the premises.

(6) On entering any premises pursuant to this section, a Tenancy Mediator shall produce to the person granting admission to the premises the Tenancy Mediator's warrant of appointment, and shall at any time thereafter while in the premises produce that warrant to any other person who demands to see it.

(7) Every person commits an offence and is liable to a fine not exceeding \$1,000 who, without reasonable excuse, obstructs or hinders any Tenancy Mediator in the exercise of the power conferred by subsection (1) of this section.

115. Principal Tenancy Adjudicator may issue practice directions—For the purpose of ensuring that the application

and administration of this Act is consistent throughout New Zealand, the Principal Tenancy Adjudicator may from time to time issue, for the guidance of other Tenancy Adjudicators, officers of the Tribunal, and parties before the Tribunal, any directions, notes, guidelines, or suggestions (not being inconsistent with this Act or any rules made under section 116 of this Act) that the Principal Tenancy Adjudicator considers necessary or desirable.

116. Rules of procedure—(1) The Governor-General may from time to time, by Order in Council, make rules for all or any of the following purposes:

- (a) Regulating the practice and procedure of the Tribunal:
- (b) Prescribing such things (including fees) as are required by this Act to be prescribed:
- (c) Prescribing such other matters as are necessary or desirable for carrying out the provisions of this Part of this Act.

(2) Without limiting the generality of subsection (1) of this section, rules may be made providing for the following:

- (a) The keeping of records by the Tribunal and the form of such records:
- (b) The form of documents to be issued by the Tribunal and the sealing of its documents:
- (c) The form and content of documents to be used by parties and intending parties, and the service of documents and the giving of notices by such persons:
- (d) The duties, functions, and powers of the Tribunal, Registrars, and Tenancy Officers in relation to—
 - (i) The service of documents and the giving of notices:
 - (ii) The enlargement of dates of hearing:
 - (iii) The adjournment of proceedings:
 - (iv) The reports of Tenancy Mediators:
- (e) The withdrawal and amendment of applications:
- (f) The summoning of witnesses, and the payment of witnesses from public funds or otherwise:
- (g) The duties, functions, and powers of Tenancy Officers and Tenancy Mediators:
- (h) The transfers of proceedings from the Tribunal to a District Court:
- (i) The filing of orders of the Tribunal in a District Court for enforcement:
- (j) The searching of the records of the Tribunal.

Appeals

117. Appeal to District Court—(1) Subject to subsection (2) of this section, any party to any proceedings before the

Tribunal who is dissatisfied with the decision of the Tribunal in the proceedings may appeal to a District Court against that decision.

(2) No appeal shall lie—

(a) Against an interim order made under section 79 of this Act; or

(b) Against an order for the payment of money, or a work order, where the amount or the value of the work that would be in dispute on appeal is less than \$1,000.

(3) A District Court shall have jurisdiction to hear and determine an appeal under this section notwithstanding any limits imposed on such courts in their ordinary civil jurisdiction by sections 29 to 34 of the District Courts Act 1947.

(4) The provisions of section 85 of this Act, with any necessary modifications, shall apply in respect of the hearing and determination by a District Court of an appeal brought under this section.

(5) An appeal under this section shall be brought by the filing of a notice of appeal, in the prescribed form, in the District Court nearest to the place at which the Tribunal sat in the proceedings to which the appeal relates.

(6) Every such notice of appeal shall be filed within 10 working days after the date of the decision to which the appeal relates.

(7) As soon as practicable after a notice of appeal has been filed under this section, the Registrar of the Court shall cause a copy of the notice to be lodged with the Tribunal's records relating to the proceedings to which the appeal relates, and, on receipt of that copy, the Registrar of the Tribunal shall send the Tribunal's file on the matter to the Court.

(8) The Registrar of the Court shall fix the time and place for the hearing of the appeal and shall notify the appellant.

(9) A copy of every notice of appeal together with a notice of the time and place for hearing the appeal shall be served by the Registrar on the other party to the proceedings before the Tribunal, and that party may appear and be heard.

(10) The filing of a notice of appeal under this section shall not operate as a stay of proceedings, unless the Tribunal or a District Court Judge, on application, so determines.

(11) Where the appeal relates to an order terminating the tenancy made on the ground of non-payment of rent, a stay of proceedings shall not be granted unless the application for stay is supported by a receipt or other written evidence tending to show that the rent was not in fact in arrear at the date of the hearing before the Tribunal.

118. Powers of District Court Judge on appeal—(1) On the hearing of an appeal under section 117 of this Act, a District Court Judge may—

- (a) Quash the order of the Tribunal and order a rehearing of the claim by the Tribunal on such terms as the Judge thinks fit; or
- (b) Quash the order, and substitute for it any other order or orders that the Tribunal could have made in respect of the original proceedings; or
- (c) Dismiss the appeal.

(2) In ordering a rehearing under subsection (1)(a) of this section, the District Court Judge may give to the Tribunal such directions as the Judge thinks fit as to the conduct of the rehearing.

(3) The procedure at an appeal under this section shall be such as the Judge may determine.

119. Appeal on questions of law to High Court—(1) Any party to an appeal under section 117 of this Act who is dissatisfied with the decision of the District Court Judge as being erroneous in point of law may appeal to the High Court on that question of law.

(2) Every appeal under this section shall be dealt with in accordance with the High Court Rules.

120. Further appeal to Court of Appeal—(1) Any party to an appeal under section 119 of this Act may, with the leave of the High Court or (if that leave is refused) with special leave of the Court of Appeal, appeal to the Court of Appeal against the determination of the High Court.

(2) An application to the High Court for leave to appeal to the Court of Appeal under this section shall be brought, in accordance with the rules of Court, within 15 working days after the determination of the High Court, or within such further time as the High Court may allow; and the High Court may grant leave accordingly if, in its opinion, the appeal involves a question of law that, because of its general or public importance or for any other reasons, ought to be submitted to the Court of Appeal for decision.

(3) Where the High Court refuses leave to any party to appeal to the Court of Appeal under this section, that party may, within 15 working days after the refusal of the High Court or within such further time as the Court of Appeal may allow, apply to the Court of Appeal, in accordance with the rules of that Court, for special leave to appeal to that Court, and the

Court of Appeal may grant leave accordingly if, in its opinion, the appeal involves a question of law that, because of its general or public importance or for any other reason, ought to be submitted to the Court of Appeal for decision.

(4) On any appeal to the Court of Appeal under this section, the Court of Appeal shall have the same power to adjudicate on the proceedings as the High Court had.

(5) The decision of the Court of Appeal on any appeal under this section shall be final; and the same judgment shall be entered in the High Court, and the same consequences and proceedings shall follow thereon, as if the decision of the Court of Appeal had been given in the High Court.

(6) The decision of the Court of Appeal on any application to that Court for leave to appeal shall be final.

PART IV

ADMINISTRATION

Functions and Powers of Director-General

121. Director-General responsible for administration of Act—(1) The Director-General shall be responsible to the Minister for the general administration of this Act.

(2) The Tenancy Bond Division of the Corporation shall assist the Director-General in the general administration of this Act.

Cf. Residential Tenancies Act, 1978–1981 (South Australia), s. 9

122. Director-General may delegate powers—(1) The Director-General may from time to time delegate in writing to the holder of any office in the Public Service, or to any specified officer of that Service, all or any of the Director-General's powers under this Act, except this power of delegation.

(2) Subject to any general or special directions given or conditions imposed in writing by the Director-General, the person to whom any powers are delegated may exercise them in the same manner and with the same effect as if they had been conferred on that person directly by this Act and not by delegation.

(3) Every person purporting to act pursuant to any delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.

(4) Any delegation under this section may be amended or revoked in writing at any time by the Director-General, and

no such delegation shall prevent the exercise of any power by the Director-General.

(5) Every delegation shall, until it is revoked, continue in force according to its tenor, notwithstanding that the person by whom it was made, or the person to whom it was made, has ceased to hold office; and in any such case, every such delegation shall be deemed to have been made by, or (as the case may require) to have been made to, that person's successor in office.

Cf. Residential Tenancies Act, 1978-1981 (South Australia), s. 10

123. General functions and powers of Director-General—(1) For the purposes of this Act, the Director-General may perform and exercise the following functions and powers:

- (a) The investigation of, and the conduct of research into, any matters generally affecting or that may affect the interests of parties to tenancy agreements, or any such matters arising in any particular case:
- (b) The publication of reports, the dissemination of information, and the taking of such steps as the Director-General thinks proper for informing members of the public of the rights and obligations of parties to tenancy agreements and of the general operation of this Act:
- (c) The giving of opinions and advice to persons on any provisions of this Act or of any other enactment or rule of law relating to tenancy agreements:
- (d) The investigation, whether on the complaint of a party or not, of any alleged breach of this Act, or of any tenancy agreement, and the taking of such action, whether involving prosecution or other proceedings, negotiation, or arbitration, as the Director-General thinks proper:
- (e) The making of reports to the Minister on any matter relating to residential tenancies that the Minister may require, or that the Director-General thinks should be drawn to the attention of the Minister.

(2) Except as required by the Minister under paragraph (e) of subsection (1) of this section, whether or not to perform or exercise any of the functions and powers specified in that subsection in any particular case shall be a matter for the Director-General's discretion, and in no circumstances shall the Director-General be obliged to perform or exercise any such function or power.

Cf. Residential Tenancies Act, 1978-1981 (South Australia), s. 11 (1)

124. Director-General may take or defend proceedings on behalf of any party—(1) Subject to subsection (3) of this section, the Director-General may, on being satisfied that there is a cause of action and that it is in the public interest to do so, on behalf of any party to a tenancy agreement do all or any of the following:

- (a) Defend any civil proceedings brought against that party under this Act:
- (b) Initiate any such proceedings against any other person:
- (c) Assume the conduct of any such proceedings already brought by or against that party:
- (d) Generally take all such steps as may be necessary to enforce or protect the rights of that party in relation to any infringement or suspected infringement of any of those rights under the tenancy agreement or this Act.

(2) Without limiting the generality of the provisions of subsection (1) of this section, the Director-General may, on behalf of any tenant, institute proceedings or assume the conduct of proceedings already commenced by the tenant for an order by the Tribunal determining the market rent of the premises.

(3) The Director-General shall not exercise the powers conferred by subsection (1) or subsection (2) of this section without first obtaining the written consent of the party concerned which, once given, shall be irrevocable except with the Director-General's written consent.

(4) In relation to any proceedings referred to in subsection (1) or subsection (2) of this section, the following provisions shall apply:

- (a) The Director-General shall, on behalf of the relevant party, have in all respects the same rights in, and control over, the proceedings, including the right to settle the action or any part of the action, as the party would have in the conduct of the proceedings:
- (b) The Director-General may, without consulting or seeking the consent of the party, conduct the proceedings in such manner as the Director-General considers to be appropriate and proper:
- (c) In the case of any proceedings already commenced, the Tribunal or court hearing the matter shall, on the Director-General's application, substitute the Director-General for the party as a party to the proceedings:
- (d) Any money (excluding costs) recovered by the Director-General shall, without any deduction, be paid by the

Director-General to the person on whose behalf the Director-General is acting:

(e) If any party to the proceedings alleges another cause of action, or if the party on whose behalf the proceedings are being defended has another cause of action, the Tribunal or Court shall, on the Director-General's application, order that the other cause of action be heard separately and that the party be a party to those other proceedings in his or her own right.

(5) Any certificate given by the Director-General in relation to any matter referred to in subsection (1) or subsection (2) or subsection (3) of this section and relating to the Director-General's powers, shall, in the absence of proof to the contrary, be sufficient evidence of the matters referred to in the certificate.

(6) Any money that the Director-General becomes liable to pay by virtue of this section shall be paid out of Part B of the Fund.

(7) Notwithstanding anything contained in subsection (1) or subsection (2) of this section, the Director-General shall not exercise any power conferred by this section, in relation to a tenancy agreement that has terminated, upon the request or complaint of any person who was a party to the agreement unless the request or complaint is made in writing within a period of 12 weeks after the termination of the agreement.

Cf. Residential Tenancies Act, 1978-1981 (South Australia), s. 11 (2)-(9), (12)

125. Immunities—No personal liability shall attach to the Director-General or to any delegate of the Director-General for any act or omission by the Director-General or the delegate made in good faith and in the exercise, or purported exercise, of all or any of the functions or powers of the Director-General under this Act, or in the discharge, or purported discharge, of all or any of the Director-General's duties under this Act, but without prejudice to any liability that the Crown may incur for the acts or omissions of any employee or agent of the Crown.

Cf. Residential Tenancies Act, 1978-1981 (South Australia), s. 12

126. Annual report—The Director-General shall, as soon as practicable after the 31st day of March in each year, submit to the Minister a report upon the administration of this Act

during the year ending on that day; and the Minister shall cause the Director-General's report, or a true copy of it, to be laid before the House of Representatives as soon as practicable after the receipt by the Minister of the report.

Cf. Residential Tenancies Act, 1978-1981 (South Australia), s. 13

Residential Tenancies Fund

127. Establishment of Fund—(1) There is hereby established a fund, to be known as the Residential Tenancies Fund.

(2) Subject to this Act, the Fund shall be administered as a separate fund within the Corporation under the control of the Director-General.

(3) The fund shall be divided into two parts, Part A and Part B.

128. Part A of the Fund—(1) To Part A of the Fund there shall be credited the following:

- (a) All sums paid, in respect of any tenancy to which this Act applies, by way of bond;
- (b) All rent money that is, by virtue of any of the provisions of this Act or of any order made by the Tribunal, to be credited to that Part;
- (c) Any other money that, by virtue of any such provision or any such order, is to be or may be credited to that Part.

(2) Subject to any other provisions of this Act, all money from time to time standing to the credit of that Part shall be held on trust by the Corporation under the control of the Director-General for the persons respectively from time to time entitled to it.

(3) All money from time to time standing to the credit of Part A of the Fund is hereby declared to be guaranteed in accordance with the provisions of subsections (2) and (3) of section 31 of the Housing Corporation Act 1974; and the provisions of those subsections shall apply, with any necessary modifications, as if such money were securities of the Corporation.

(4) Subject to section 22 of this Act and to subsections (5) and (7) of this section, no money shall be paid out of Part A of the Fund, except—

- (a) Pursuant to an order of the Tribunal; or
- (b) With the Director-General's prior written consent.

(5) If, in respect of any sum of money that is credited to Part A of the Fund, the Director-General or the Corporation is uncertain who is entitled to it, or whether or not any such sum should be paid out of that Part to any person, the Director-General may apply to the Tribunal for an order determining who is so entitled or whether or not any such sum should be so paid out.

(6) Where any money is paid out of that Part in conformity with any such order of the Tribunal, neither the Corporation nor the Director-General shall incur any liability in respect of the payment.

(7) The Corporation may from time to time, invest any money from time to time standing to the credit of Part A of the Fund in such manner or manners and on such terms and conditions as the Corporation may from time to time think fit; but any money so invested shall, notwithstanding that investment, be deemed to remain credited to that Part.

(8) All interest, dividends, and other gains (whether in the nature of income or capital, and whether in money or otherwise, and whether realised or not) arising from any such investment shall be credited to Part B of the Fund.

129. Part B of the Fund—(1) To Part B of the Fund there shall be credited the following:

(a) All interest referred to in section 128 (8) of this Act:

(b) All fees payable in respect of applications made to the Tribunal:

(c) Any money that may be appropriated by Parliament for crediting to that Part:

(d) Any money that, pursuant to section 130 of this Act, may be made available by the Corporation for crediting to that Part:

(e) Any money that, pursuant to section 131 of this Act, may be borrowed by the Corporation for crediting to that Part:

(f) Any other money that, by virtue of this Act or any other enactment, shall or may be credited to that Part.

(2) Subject to this Act, all money from time to time standing to the credit of the Corporation in Part B of the Fund shall be the exclusive property of the Corporation.

(3) No money shall be paid out of Part B of the Fund except as follows:

(a) Pursuant to an order of the Tribunal awarding payment of costs or disbursements to any person who is or has been a party to an application to the Tribunal:

- (b) In payment of any interest payable on any money that, pursuant to section 130 or section 131 of this Act, has been made available or borrowed by the Corporation:
- (c) In payment of any costs directly or indirectly incurred by the Director-General in the exercise of any powers under this Act:
- (d) In payment of any costs incurred by the Director-General or by the Corporation in the administration of this Act:
- (e) In payment of all salaries, wages, fees, allowances, expenses, costs, and disbursements payable under or pursuant to this Act or any other Act to any person, including any member of the Tribunal, Tenancy Mediator, Tenancy Officer, District Registrar, or bailiff, in connection with the performance or exercise by that person, in relation to any of the provisions of this Act, of any functions, duties, or powers imposed or conferred on that person by this Act or any other Act:
- (f) In payment of any sum of money that, by virtue of any of the provisions of this Act, shall be paid out of that Part:
- (g) For any other purposes that, in connection with this Act or the administration of this Act, the Director-General, with the prior written approval of the Minister and subject to any conditions that the Minister may specify in writing, shall consider proper:
- (h) For any purposes that, in connection with this Act or the administration of this Act, the Minister may from time to time, either generally or specifically, direct in writing.

130. Corporation may make money available—The Corporation may from time to time, subject to such conditions (if any) as the Corporation may think fit, make available any of its own money for the purposes of crediting the same to Part B of the Fund.

131. Corporation may borrow—The Corporation may from time to time, with the prior written approval of the Director-General and subject to any conditions that the Director-General may specify in writing, borrow any money for the purposes of crediting the same to Part B of the Fund.

132. No execution—No money from time to time standing to the credit of the Fund or either Part of the Fund shall be taken in or be subject to execution, whether by way of garnishee or otherwise, without the prior written consent of the Director-General.

PART V

MISCELLANEOUS PROVISIONS

133. Tribunal or Director-General may require terms of tenancy agreement—(1) The Tribunal or the Director-General may, at any time during the currency of a tenancy agreement or within 12 months after its termination, by notice in writing, require the landlord to inform the Tribunal or the Director-General of the provisions of the agreement.

(2) Every person who, without reasonable excuse, fails to comply with such a notice within 10 working days after receiving it commits an offence and is liable to a fine not exceeding \$200.

134. Waiver by landlord of breach by tenant—A waiver by the landlord of any breach by the tenant, or a failure by the landlord to enforce any obligation by the tenant, shall not,—

- (a) Where the breach is of a continuing nature, prevent the landlord from enforcing the obligation in future; or
- (b) Where the breach is not of a continuing nature, prevent the landlord from exercising any remedy in the event of a subsequent breach by the tenant;—

but any such waiver or failure to enforce may be taken into consideration by the Tribunal if the landlord subsequently applies to the Tribunal for an order terminating the tenancy.

135. Recovery of money paid by mistake—(1) Subject to subsection (2) of this section, where one party to a tenancy agreement pays any amount to the other party under a mistake of law or fact relating to the agreement, that party may, upon application to the Tribunal, recover that amount from the other party.

(2) In any case to which subsection (1) of this section applies, the Tribunal may decline to order the repayment of the amount in question, in whole or in part, if the Tribunal is satisfied that the person who received the money did so in good faith, and has so altered his or her position in reliance on the validity of the payment that, in the opinion of the Tribunal, having

regard to all possible implications in respect of other persons, it would be unfair to order the repayment of the whole or any part of that amount.

Cf. Residential Tenancies Act, 1978–1981 (South Australia), s. 90

136. Service of documents—(1) Where any notice or other document is required or authorised by this Act to be given to or served on a landlord or a tenant, it shall be sufficient if it is given or served in any of the following ways:

- (a) It may be given to or served on the landlord or the tenant personally;
- (b) It may be sent by post addressed to the landlord or the tenant at the address for service given by the landlord or the tenant in accordance with section 15 or section 16 of this Act;
- (c) It may be delivered to the premises to which that address for service relates, and either placed in the mailbox or attached to the door in a prominent position.

(2) Without limiting the provisions of subsection (1) of this section, any notice or other document required or authorised by this Act to be given to or served upon any tenant under a tenancy agreement shall be deemed to have been duly given to or served on the tenant if it is given—

- (a) To any person appearing to have attained the age of 16 years and to be residing at the premises to which the agreement relates; or
- (b) To the person who ordinarily pays the rent payable under the tenancy agreement; or
- (c) To any solicitor or other agent of the tenant duly authorised by the tenant to receive the same.

(3) Without limiting the provisions of subsection (1) of this section, any notice or other document required or authorised by this Act to be given to or served upon any landlord under a tenancy agreement shall be deemed to have been duly given or served if it is given—

- (a) To any person appearing to have attained the age of 16 years and to be residing at the place of residence of the landlord; or
- (b) To the person (not being a bank or similar institution) who ordinarily receives the rent payable under the agreement; or
- (c) To any solicitor or other agent of the landlord duly authorised by the landlord to receive the same.

(4) Where 2 or more persons are landlords or tenants under a residential tenancy agreement, it shall be sufficient compliance

with a provision of this Act requiring or authorising a notice or other document to be given to or served upon the landlord or the tenant under a tenancy agreement if the notice or other document is given or served, in accordance with this Act, to or upon any one of the landlords or any one of the tenants.

(5) A witness summons may be served on the witness—

(a) Personally; or

(b) By sending it by post addressed to the witness at the witness's last-known place of residence or business.

(6) Where any document is sent by post in accordance with any of the foregoing provisions of this section, it shall be deemed, in the absence of evidence to the contrary, to have been given or served on the 4th working day after the date on which it was posted; and, in proving service, it shall be sufficient to prove that the letter was properly addressed and posted.

(7) Where any document is delivered to any address for service in accordance with any of the foregoing provisions of this section, it shall be deemed, in the absence of evidence to the contrary, to have been given or served on the 2nd working day after the date on which it was delivered; and, in proving service, it shall be sufficient to prove that the letter was properly addressed and delivered.

Cf. Residential Tenancies Act, 1978–1981 (South Australia), s. 93

137. Prohibited transactions—(1) No person shall—

(a) Enter into any transaction, or make any contract or arrangement, purporting to do, whether presently or at some future time or upon the happening of any event or contingency, anything that contravenes or will contravene any of the provisions of this Act; or

(b) Enter into any transaction or make any contract or arrangement, whether orally or in writing, or do anything, for the purpose of or having the effect of, in any way, whether directly or indirectly, defeating, evading, or preventing the operation of any of the provisions of this Act.

(2) Requiring any person to enter into any transaction, or to make any contract or arrangement, in contravention of subsection (1) of this section is hereby declared to be an unlawful act.

(3) Subject to subsection (4) of this section, any provision of any transaction, contract, or arrangement entered into in contravention of subsection (1) of this section that would have

the effect of, in any way, whether directly or indirectly, defeating, evading, or preventing the operation of any of the provisions of this Act shall be of no effect.

(4) All money paid and the value of any other consideration for the tenancy provided by the tenant (not being rent lawfully recoverable by the landlord) or, where the transaction takes the form of an option to purchase the premises to which the transaction relates, by the person on whom the option to purchase is conferred, shall be recoverable as a debt due to the tenant or prospective purchaser by the landlord.

Cf. Residential Tenancies Act, 1978–1981 (South Australia), s. 89 (3)

138. Offences triable summarily—(1) Every offence against any of the provisions of this Act, except section 111, or against any regulations made under this Act, shall be punishable on summary conviction.

(2) Notwithstanding anything in section 14 of the Summary Proceedings Act 1957, any information in respect of any offence against this Act, or against any regulations made under this Act, may be laid at any time within 1 year after the time when the matter of the information arose.

Cf. Residential Tenancies Act, 1978–1981 (South Australia), s. 94

139. Regulations relating to accommodation brokers—The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) Providing for the registering, licensing, or approval of accommodation brokers, including the qualifications required of, and the conditions to be met by, persons intending to set up business as accommodation brokers, and for the disciplining of accommodation brokers who are so registered, licensed, or approved:
- (b) Requiring persons carrying on or intending to carry on business as accommodation brokers to provide bonds to secure the proper conduct of their businesses:
- (c) Conferring on the Tribunal jurisdiction in respect of all or any of the matters referred to in paragraphs (a) and (b) of this section:
- (d) Regulating the conduct of business by accommodation brokers, including advertising carried on in the course of, or in relation to, such business:

- (e) Conferring on the Director-General in respect of any disputes and proceedings arising under the regulations all or any of the powers conferred on the Director-General by section 124 of this Act in respect of proceedings under this Act:
- (f) Prescribing fees payable in respect of any matters under any regulations made under this section:
- (g) Prescribing offences in respect of the contravention of or non-compliance with any regulations made under this section, and the amounts of fines that may be imposed in respect of any such offences, which fines shall be an amount not exceeding \$5,000, and, where the offence is a continuing one, a further amount not exceeding \$500 for every day or part of a day during which the offence has continued.

140. Regulations relating to other matters—The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) Prescribing forms to be used for any purposes under this Act:
- (b) Prescribing fees to be paid in respect of any matter under this Act, and specifying the circumstances in which any such fee may be waived or remitted in whole or in part:
- (c) Requiring the provision of specified information by the landlord to the tenant at the commencement of a tenancy agreement:
- (d) Providing for the payment of bonds by instalments; and providing for a landlord to be indemnified or protected in some other way from any loss arising out of the failure by the tenant to pay all the required instalments:
- (e) Prescribing offences in respect of the contravention of or non-compliance with any regulations made under this Act, and the amounts of fines that may be imposed in respect of any such offences, which fines shall be an amount not exceeding \$1,000 and, where the offence is a continuing one, a further amount not exceeding \$100 for every day or part of day during which the offence has continued:
- (f) Providing for such other matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.

Cf. Residential Tenancies Act, 1978–1981 (South Australia), s. 95

141. First Schedule may be amended by Order in Council—The Governor-General may from time to time, by Order in Council made on the advice of the Minister tendered after consultation with the Chairman of the Tribunal, amend the First Schedule to this Act by adding or omitting the name of any place.

142. Effect on Property Law Act 1952—(1) Nothing in Part VIII of the Property Law Act 1952 shall apply to any tenancy to which this Act applies.

(2) The provisions of Part VIII of the Property Law Act 1952, so far as they were applicable to any fixed-term tenancy or service tenancy immediately before the commencement of this Act, shall continue to apply to that tenancy, but shall be read subject to the provisions of this Act.

143. Housing Corporation Act 1974 amended—(1) The Housing Corporation Act 1974 is hereby amended by inserting, after section 3, the following section:

“3A. Corporation to have Tenancy Bond Division—(1) There shall be established, within the Corporation, a division to be called the Tenancy Bond Division.

“(2) The principal function of the Tenancy Bond Division of the Corporation shall be to assist the Director-General in the administration of the Residential Tenancies Act 1986.”

(2) The Housing Corporation Act 1974 is hereby further amended by inserting, after section 23, the following section:

“23A. Guarantees and indemnities under Residential Tenancies Act 1986—(1) Without limiting anything in section 23 of this Act, the Corporation may in writing, on any conditions that it thinks fit, give in respect of any bond payable by tenant to a landlord under any tenancy to which the Residential Tenancies Act 1986 applies such guarantee or indemnity as it thinks fit.

“(2) Any loss that may be incurred by the Corporation by reason of the operation of this section shall be a charge against Part B of the Residential Tenancies Fund established by section 127 of the Residential Tenancies Act 1986.”

(3) Section 41 of the Housing Corporation Act 1974 is hereby amended by inserting, after subsection (1), the following subsection:

“(1A) The financial statements referred to in subsection (1) of this section shall show separately the financial position of the Residential Tenancies Fund established by section 127 of

the Residential Tenancies Act 1986, and the financial results of the operation of that Fund during the year to which the statements relate.”

144. Repeals, revocations, and amendments—(1) The enactments specified in the Second Schedule to this Act are hereby repealed.

(2) The regulations specified in the Third Schedule to this Act are hereby revoked.

(3) The enactments specified in the first column of the Fourth Schedule to this Act are hereby amended in the manner indicated in the second column of that Schedule.

SCHEDULES

Sections 71 (2), 72, 75 (1)

FIRST SCHEDULE

PLACES AT WHICH OFFICES OF THE TRIBUNAL SHALL BE SITUATED

Whangarei	Hastings
Henderson	New Plymouth
Auckland	Wanganui
Takapuna	Palmerston North
Glen Innes	Masterton
Manukau	Porirua
Mangere	Wellington
Otara	Lower Hutt
Hamilton	Nelson
Te Kuiti	Blenheim
Tauranga	Greymouth
Whakatane	Christchurch
Rotorua	Timaru
Gisborne	Dunedin
Napier	Invercargill

Section 144 (1)

SECOND SCHEDULE

ENACTMENTS REPEALED

- 1955, No. 50—The Tenancy Act 1955. (R.S. Vol. 11, p. 471.)
 1964, No. 23—The Tenancy Amendment Act 1964. (R.S. Vol. 11, p. 516.)
 1968, No. 122—The Tenancy Amendment Act 1968. (R.S. Vol. 11, p. 524.)
 1973, No. 26—The Rent Appeal Act 1973.
 1977, No. 56—The Tenancy Amendment Act 1977. (R.S. Vol. 11, p. 527.)
 1977, No. 57—The Rent Appeal Amendment Act 1977.
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Section 144 (2)

THIRD SCHEDULE

REGULATIONS REVOKED

Title	Statutory Regulations Serial Number
The Emergency Forces Tenancy Regulations 1950	1950/229
The Tenancy Regulations 1956	1956/187
The Rent Appeal Act Commencement Order 1974	1974/14
The Rent Appeal (Fee) Regulations 1978	1978/126
The Rent Limitations Regulations 1984	1984/17
The Rent Limitations Regulations 1984, Amendment No. 1	1984/92
The Rent Limitations Regulations 1984, Amendment No. 2	1984/243

FOURTH SCHEDULE

Section 144 (3)

ENACTMENTS AMENDED

Enactment	Amendment
1955, No. 51—The Housing Act 1955 (R.S. Vol. 7, p. 297)	By repealing sections 19 and 20, and substituting the following section: “19. Leases and tenancies —Subject to the Residential Tenancies Act 1986 and to any general directions of the Minister, every lease or tenancy granted by the Corporation of State housing land shall be on such terms, at such rent, and otherwise as the Corporation may stipulate.”
1957, No. 36—The Public Trust Office Act 1957 (Reprinted 1976, Vol. 5, p. 4361)	By omitting from section 21 (2) the words “Tenancy Act 1955”, and substituting the words “Residential Tenancies Act 1986”. By omitting from section 121 the words “Notwithstanding any statutory provision or”, and substituting the words “Subject to the Residential Tenancies Act 1986 but notwithstanding any other enactment or rule of”.
1957, No. 87—The Summary Proceedings Act 1957 (R.S. Vol. 9, p. 583)	By inserting in Part II of the First Schedule, before the item relating to the Trade Marks Act 1953, the following item: “The Residential Tenancies Act 1986/106/Giving false evidence”.
1969, No. 47—The Legal Aid Act 1969 (Reprinted 1975, Vol. 3, p. 2111)	By repealing section 15 (1) (i) (as added by section 33 of the Rent Appeal Act 1969), and substituting the following paragraph: “(i) Proceedings before Tenancy Tribunal or on appeal to a District Court or the High Court upon the decision of that Tribunal or in respect of any case stated by that Tribunal under section 103 of the Residential Tenancies Act 1986.”

This Act is administered in the Housing Corporation of New Zealand.
