

Rental Bond Board Bill

No.

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LEGISLATIVE ASSEMBLY

Read 1° 17 April 1991

(Brought in by Mr McCutcheon and Mr Roper)

A BILL

to establish a Rental Bond Board, to provide for the payment of bonds to the Rental Bond Board, to establish a Tenancy and Residency Fund and to provide for the investment of and payments out of the Fund, to amend the **Residential Tenancies Act 1980**, the **Caravan Parks and Movable Dwellings Act 1988** and the **Rooming Houses Act 1990** and for other purposes.

Rental Bond Board Act 1991

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. *Purposes*

The main purposes of this Act are—

- 5 (a) to establish a Rental Bond Board;
- (b) to establish a Tenancy and Residency Fund;
- (c) to provide for the payment of bonds to the Board;
- (d) to provide for the investment of and payments out of the Fund.

10 2. *Commencement*

- (1) Parts 1 and 2 and section 98 of this Act come into operation on a day to be proclaimed.
- (2) The rest of this Act comes into operation on a day to be proclaimed.

Section headings appear in bold italics and are not part of the Act (see **Interpretation of Legislation Act 1984**).

3. Definitions

In this Act—

“**accumulated entitlement**” in relation to a bond at a particular date, means the amount or the total of the amounts (if any) which have been added to the bond pursuant to section 27 to that date. 5

“**Board**” means the Rental Bond Board established under this Act.

“**bond**” means—

- (a) a bond within the meaning of the **Residential Tenancies Act 1980**; or 10
- (b) a bond within the meaning of the **Caravan Parks and Movable Dwellings Act 1988**; or
- (c) a bond within the meaning of the **Rooming Houses Act 1990**. 15

“**Bond Account**” means the Bond Account in the Fund.

“**Fund**” means the Tenancy and Residency Fund established under this Act.

“**landlord**” means—

- (a) a landlord within the meaning of the **Residential Tenancies Act 1980**; or 20
- (b) a caravan park owner or caravan owner within the meaning of the **Caravan Parks and Movable Dwellings Act 1988**; or
- (c) a rooming house owner within the meaning of the **Rooming Houses Act 1990**. 25

“**rented premises**” means—

- (a) rented premises within the meaning of the **Residential Tenancies Act 1980**; or
- (b) a site or caravan within the meaning of the **Caravan Parks and Movable Dwellings Act 1988**; or 30
- (c) a room within the meaning of the **Rooming Houses Act 1990**.

“tenant” means—

- (a) a tenant within the meaning of the **Residential Tenancies Act 1980**; or
- (b) a resident within the meaning of the **Caravan Parks and Movable Dwellings Act 1988**; or
- (c) a resident within the meaning of the **Rooming Houses Act 1990**.

“tenancy agreement” means—

- (a) a tenancy agreement within the meaning of the **Residential Tenancies Act 1980** to which that Act applies; or
- (b) any arrangement or understanding under which a person occupies a site in a caravan park as a resident under the **Caravan Parks and Movable Dwellings Act 1988** and the conditions of that occupancy; or
- (c) any arrangement or understanding under which a person occupies a room as a resident under the **Rooming Houses Act 1990** and the conditions of that occupancy.

“Tenancy and Residency General Account” means the Tenancy and Residency General Account in the Fund.

“Tribunal” means the Residential Tenancies Tribunal established under the **Residential Tenancies Act 1980**.

4. *Application of Residential Tenancies Act 1980*

This Act must be taken to form part of and must be read as one with the **Residential Tenancies Act 1980**.

5. *Objective*

The objective of this Act is to create a fair and equitable system for the collection, management and disbursement of bond money.

PART 2—RENTAL BOND BOARD

6. *Establishment*

There shall be a Rental Bond Board.

7. *Body corporate*

- (1) The Board— 5
 - (a) is a body corporate with perpetual succession;
 - (b) shall have a common seal;
 - (c) may acquire, hold and dispose of real and personal property;
 - (d) may sue and be sued in its corporate name; 10
 - (e) may do and suffer all acts and things that a body corporate may by law do and suffer.
- (2) The common seal of the Board must be kept as directed by the Board and must be used only as authorised by the Board. 15
- (3) All courts must take judicial notice of the seal of the Board on a document and must presume that the document was properly sealed.

8. *Functions of Board*

- (1) The functions of the Board are— 20
 - (a) to control and administer the Fund; and
 - (b) to collect and disburse all bond money paid by tenants; and
 - (c) to carry out any other function conferred on it by this Act or any other Act. 25
- (2) In the exercise of its functions, the Board—
 - (a) is subject to the general direction and control of the Minister; and
 - (b) may report or make recommendations to the Minister on any matter which it thinks fit. 30

9. **Powers**

- (1) The Board has power to do anything that is necessary for it to do for or in connection with the performance of its functions.
- 5 (2) Without affecting the generality of sub-section (1), the Board may—
- (a) enter into arrangements with any person or body to act as its agent in relation to the receipt and payment out of bonds and the payment of any accumulated entitlement in relation to a bond; and
- 10 (b) use any means it thinks fit to promote the operations of the Board and the operation of this Act.

10. **Membership**

- 15 (1) The Board shall consist of—
- (a) the Director of Consumer Affairs appointed for the purposes of the **Ministry of Consumer Affairs Act 1973**; and
- 20 (b) 5 other members appointed by the Governor in Council.
- (2) Of the members of the Board appointed by the Governor in Council—
- (a) one shall be nominated by the Minister and shall be Chairperson; and
- 25 (b) one shall be nominated by the Minister from a panel of 3 names provided by the Tenants Union of Victoria Inc. as representative of tenants' interests; and
- 30 (c) one shall be nominated by the Minister from a panel of 3 names provided by the Real Estate Institute of Victoria as representative of landlords' interests; and
- (d) one shall be nominated by the Treasurer; and
- 35 (e) one shall be nominated by the Minister administering the **Housing Act 1983**.
- (3) If a body fails to provide the required panel of names of

persons for appointment to the Board within 30 days after being asked to do so, the Minister may nominate any appropriate person to be a member of the Board without that panel.

- 11. *Terms and conditions*** 5
- (1) An appointed member of the Board holds office for the term, not exceeding 3 years, set out in the instrument of appointment.
 - (2) Subject to this Act, an appointed member holds office on the terms and conditions set out in the instrument of appointment. 10
 - (3) An appointed member may resign by letter in writing delivered to the Governor in Council.
 - (4) The Governor in Council may at any time remove an appointed member from office. 15
- 12. *Remuneration***
- A member of the Board (not being an officer or employee of the public service) is entitled to be paid the remuneration (if any) fixed from time to time in respect of that member by the Governor in Council. 20
- 13. *Deputy members***
- (1) The Governor in Council may appoint a deputy member for any appointed member of the Board.
 - (2) A deputy member is to be appointed in the same manner and holds office for the same period as the member for whom he or she is deputy. 25
 - (3) A deputy member is appointed on the terms and conditions set out in the instrument of appointment.
 - (4) A deputy member may resign by letter in writing delivered to the Governor in Council. 30
 - (5) The Governor in Council may at any time remove a deputy member from office.

(6) A deputy member may act in the place of the member for whom he or she is deputy if—

(a) the member is absent from a meeting of the Board;
or

5 (b) the office of the member becomes vacant under section 14.

(7) A deputy member while acting as a member may exercise the powers and carry out the functions of that member.

14. *Vacation of office*

10 The office of an appointed member of the Board becomes vacant if—

(a) the member becomes bankrupt; or

15 (b) the member is convicted of an indictable offence or of an offence which if committed in Victoria would be an indictable offence; or

(c) the member is absent from 4 consecutive meetings of the Board without the authority of the Chairperson; or

(d) the member resigns or dies; or

20 (e) the member is removed from office under section 11 (4).

15. *Chairperson*

(1) The Chairperson must preside at any meeting of the Board at which he or she is present.

25 (2) If the Chairperson is not present at a meeting, the members present must elect a member to preside at the meeting.

(3) The deputy for the Chairperson must not preside at a meeting unless elected under sub-section (2).

30 **16. *Procedure***

(1) Four members of the Board constitute a quorum of the Board.

(2) The Board must meet at least once in every 2 months.

- (3) A question arising at a meeting shall be determined by a majority of votes of members present and voting on the question.
- (4) In the event of an equality of votes on any question at a meeting the person presiding has a second or casting vote. 5
- (5) The Board must ensure that accurate minutes are kept of each meeting.
- (6) Subject to this Act, the Board may regulate its own proceedings. 10

17. Effect vacancy or defect

An act or decision of the Board is not invalid by reason only that—

- (a) there is a vacancy in its membership, including a vacancy arising out of a failure to appoint an original member; or 15
- (b) there is a defect or irregularity in or in connection with the appointment of any of its members; or
- (c) in the case of a deputy member acting as a member, the occasion for acting had not arisen or had ceased. 20

18. Immunity

- (1) A member of the Board is not personally liable for anything done or omitted to be done in good faith and without negligence—
 - (a) in the exercise of a power or the discharge of a duty under this Act; or 25
 - (b) in the reasonable belief that the act or omission was in the exercise of a power or the discharge of a duty under this Act.
- (2) Any liability resulting from an act or omission that would but for sub-section (1) attach to a member of the Board attaches instead to the Board. 30

19. Staff

Subject to the **Public Service Act 1974**, there shall be appointed any officers and employees that are necessary for the operation of the Board.

5 **PART 3—TENANCY AND RESIDENCY FUND**

20. Establishment of Fund

There is established a Tenancy and Residency Fund.

21. Accounts in Fund

The Fund shall contain the following Accounts—

- 10 (a) the Bond Account;
 (b) the Tenancy and Residency General Account.

22. Bond Account

- 15 (1) There must be paid into the Fund to the credit of the Bond Account all amounts of bond received by the Board under this Act.
- (2) The Board must pay out of the Bond Account all amounts of bond—
- (a) authorised by or under this Act to be paid out of the Account; or
- 20 (b) directed by the Tribunal to be paid out of the Account.

23. Tenancy and Residency General Account

There must be paid into the Fund to the credit of the Tenancy and Residency General Account—

- 25 (a) all interest received on the investment of that Account and the Bond Account; and
- (b) all penalties paid or recovered under this Act, the **Residential Tenancies Act 1980**, the **Rooming Houses Act 1990** and Parts 2 to 5 of the **Caravan Parks and Movable Dwellings Act 1988**; and
- 30

- (c) all fees paid under this Act, the **Residential Tenancies Act 1980**, the **Rooming Houses Act 1990** and Parts 2 to 5 of the **Caravan Parks and Movable Dwellings Act 1988**; and
 - (d) any gift, donation or bequest of money to the Fund; 5
and
 - (e) any money appropriated by Parliament for the purposes of this Act, the **Residential Tenancies Act 1980**, the **Rooming Houses Act 1990** or Parts 2 to 5 of the **Caravan Parks and Movable Dwellings Act 1988**; and 10
 - (f) all other money required or authorised under this Act or any other Act to be paid into the Tenancy and Residency General Account.
- 24. Payments out of Tenancy and Residency General Account— 15**
General
- The Board must pay out of the Tenancy and Residency General Account—
- (a) any remuneration payable to the members of the Board; and 20
 - (b) the costs of any audit under section 32; and
 - (c) the costs of administration of this Act, the **Residential Tenancies Act 1980**, the **Rooming Houses Act 1990** and Parts 2 to 5 of the **Caravan Parks and Movable Dwellings Act 1988**; and 25
 - (d) any amount of accumulated entitlement—
 - (i) authorised by or under this Act to be paid out of the Fund; or
 - (ii) directed by the Tribunal to be paid out of the Fund; and 30
 - (e) any other amount directed by the Tribunal under this Act, the **Residential Tenancies Act 1980**, the **Rooming Houses Act 1990** or the **Caravan Parks and Movable Dwellings Act 1988** to be paid out of the Account; and 35
 - (f) any other amounts authorised by or under this Act or any of those Acts to be paid out of that Account.

**25. Payments out of Tenancy and Residency General Account—
Additional**

The Board must make payments out of the Tenancy and Residency General Account—

- 5 (a) at the direction of the Minister, to provide financial assistance to government departments, statutory authorities, municipal councils and other persons or bodies engaged in—
- 10 (i) providing information about this Act, the **Residential Tenancies Act 1980**, the **Rooming Houses Act 1990** and the **Caravan Parks and Movable Dwellings Act 1988**; or
- (ii) programs for educating or informing the public about this Act or those Acts; or
- 15 (iii) conducting research into matters relating to tenancy agreements; or
- (iv) conducting research into matters relating to caravan parks or publishing the results of that research; and
- 20 (b) at the direction of the Minister administering the **Housing Act 1983**, to provide financial assistance for housing projects and support services for tenants other than tenants in housing owned by or vested in the Director of Housing.

25 **26. Ministers to fix total payment**

- (1) The total amount paid out of the Tenancy and Residency General Account under paragraph (a) or (b) of section 25 in any year must not exceed the amount fixed jointly by the Minister and the Minister administering the **Housing Act 1983** in respect of payments under that paragraph for that year.
- 30
- (2) If the amount paid out of the Tenancy and Residency General Account under paragraph (a) or (b) of section 25 is less than the total amount fixed under sub-section (1) in respect of that paragraph, the remaining amount remains in the Account and may be paid out for that purpose in a later year or years.
- 35

27. Accumulated entitlement

- (1) The Minister and the Minister administering the **Housing Act 1983** may in any year jointly fix a percentage which is the percentage of each bond held in the Bond Account which must be added to that bond. 5
- (2) Any amount or amounts added to a bond pursuant to sub-section (1) must be retained in the Tenancy and Residency General Account until paid out pursuant to Part 4.
- (3) Sub-section (1) does not apply to a bond which has been held in the Bond Account for less than 12 months at the time the percentage is fixed. 10

28. Restriction on fixing of amounts

The Ministers must not fix any amount under section 26 or 27 for any purpose unless they are satisfied that there will be sufficient money in the Tenancy and Residency Account for that purpose after all payments required under section 24 have been met. 15

29. Investment powers of Board

- (1) The Board may invest any money in the Fund in any manner approved by the Treasurer. 20
- (2) In the exercise of its powers under sub-section (1), the Board must manage and invest the Fund so as to optimise the return earned on the Fund having regard to— 25
 - (a) the need to provide payments out of the Fund; and
 - (b) the need to exercise reasonable care and prudence so as to maintain the integrity of the Fund.
- (3) The Board may, by instrument, delegate any power of the Board under sub-section (1) to— 30
 - (a) a member of the Board; or
 - (b) a member of the staff of the Board; or

- (c) any other person or corporation approved by the Treasurer for the purposes of this section.

30. Accounts and records

- 5 (1) The Board must ensure that there are kept proper accounts and records of the transactions and affairs of the Board and such other records as sufficiently explain the financial operations and financial position of the Board.
- 10 (2) The Board must do all things necessary to do each of the following—
 - (a) ensure that all money payable to the Board is properly collected;
 - (b) ensure that all money expended by the Board is properly expended and properly authorised;
 - 15 (c) ensure that adequate control is maintained over assets owned by, or in the custody of the Board;
 - (d) ensure that all liabilities incurred by the Board are properly authorised;
 - (e) ensure efficiency and economy of operations and avoidance of waste and extravagance;
 - 20 (f) develop and maintain an adequate internal budgeting system;
 - (g) develop and maintain an adequate internal audit system.

25 **31. Annual report**

- (1) The Board must, in respect of each financial year, prepare an annual report containing—
 - (a) a report of its operations during the financial year; and
 - 30 (b) financial statements for the financial year—and submit the report to the Minister not later than 30 September next following the financial year.
- (2) The report of operations referred to in sub-section (1) (a)—

- (a) must be prepared in a form and contain information determined by the Board to be appropriate; and
 - (b) must contain any further information required by the Minister.
- (3) The financial statements referred to in sub-section (1) 5
- (b)—
- (a) must contain information determined by the Treasurer to be appropriate; and
 - (b) must be prepared in a manner and form approved by the Treasurer; and 10
 - (c) must present fairly the results of the financial transactions of the Board during the financial year to which they relate and the financial position as at the end of that year;
 - (d) must be signed by the principal accounting officer 15
(by whatever name called) of the Board and by the Chairperson and another member of the Board who must—
 - (i) state whether, in their opinion, the financial statements present fairly the results of the financial transactions of the Board during the financial year to which they relate and whether they sufficiently explain the financial position of the Board as at the end of the financial year; 20
and 25
 - (ii) state whether, at the date of signing the financial statements, they were aware of any circumstances that render any particulars included in the statements misleading or inaccurate and, if so, particulars of the 30
circumstances; and
 - (e) must be audited as required by section 32 (1).
- (4) The Minister must cause each annual report submitted to the Minister under this section to be laid before the Legislative Council and the Legislative Assembly before 35
the expiration of the seventh sitting day of the Legislative Council or the Legislative Assembly, as the case may be, after the annual report has been received by the Minister.

(5) If the Board fails to submit an annual report to the Minister—

(a) if an extension has not been granted under sub-section (7)—by 30 September in any year; or

5 (b) if such an extension has been granted—by the date to which the extension was granted—

the Minister must report or cause to be reported that failure and the reasons for the failure to each House of Parliament.

10 (6) The Board may apply in writing to the Minister for an extension of the date by which an annual report is to be submitted to the Minister.

(7) The Minister may in writing grant to the Board an extension to a date that the Minister determines.

15 (8) The Minister must advise or cause to be advised each House of Parliament of each extension granted under this section and the reasons for the extension.

20 (9) This section does not apply to the Board if, as a result of an order made under the **Annual Reporting Act 1983**, the Board is required to submit an annual report under that Act.

32. *Audit*

(1) The financial statements referred to in section 31 must be audited by the Auditor-General.

25 (2) The Auditor-General has, in respect of the audit of the financial statements, all the powers conferred on the Auditor-General by any law relating to the audit of the public accounts.

30 (3) Without limiting the generality of sub-section (2), the Auditor-General and each officer of the Auditor-General—

(a) has right of access at all times to the books of the Board; and

35 (b) may require from an officer or employee of the Board any information, assistance and explanations

necessary for the performance of the duties of the Auditor-General in relation to the audit.

- (4) The Board must pay to the Consolidated Fund an amount to be determined by the Auditor-General to defray the costs and expenses of any audit by the Auditor-General. 5

PART 4—BONDS

Division 1—Deposit of Bonds with Board

33. *Duty to deposit bond*

- (1) If a landlord or a person acting on behalf of a landlord receives a bond in respect of a tenancy agreement, that landlord or person must— 10
- (a) pay the amount of the bond to the Board within the prescribed time; and
- (b) forward to the Board the prescribed information in a form approved by the Minister. 15

Penalty: \$5000.

- (2) Sub-section (1) applies despite any other law, any tenancy agreement or any other contract or arrangement relating to the bond. 20
- (3) In this section “**prescribed time**” means—
- (a) unless the time is extended under section 34, 10 business days after the bond is received; or
- (b) if the time is extended under section 34, that extended time. 25

34. *Extension of time*

- (1) The Minister may extend the time within which, in a particular case or class of cases, an amount of bond must be deposited with the Board under section 33.
- (2) The Minister may revoke or vary an extension of time granted under sub-section (1). 30

(3) An extension of time or variation of an extension of time may be given—

(a) by notice in writing to the landlord; or

(b) in the case of a class of cases, by notice published in the Government Gazette.

35. *Receipt for bond*

(1) The Board must—

(a) give a receipt in accordance with sub-section (2) to any landlord or person who makes a payment to the Board under section 33 (1); and

(b) give to each tenant under the tenancy agreement—

(i) a copy of the receipt; and

(ii) any prescribed information about the tenant's rights under this Act.

(2) A receipt under sub-section (1) must be in writing and must state—

(a) the name and address of the landlord;

(b) particulars sufficient to identify each tenant and the rented premises;

(c) the date of receipt of the payment; and

(d) the total amount paid; and

(e) if there is more than one tenant of the rented premises, the proportion of bond attributed to each tenant under the tenancy agreement.

(3) In the absence of information to the contrary, each tenant is to be taken to have contributed equally to the bond.

36. *Payment by instalments*

If a bond is paid by instalments to a landlord or a person acting on behalf of a landlord, sections 33 to 35 apply in relation to each instalment paid as if the instalment were the bond.

37. Bond held on trust

A landlord under a tenancy agreement who receives a bond in respect of a tenancy agreement holds the bond upon trust for the tenant subject to and in accordance with this Act until the bond is paid to the Rental Bond Board. 5

38. Payment of bond into Fund

The Board must pay all money received under sections 33 and 36 into the Fund to the credit of the Bond Account. 10

Division 2—Payment out of Bonds

39. Definitions

In this Division and Division 3—

“**bond**” includes any accumulated entitlement in respect of the bond. 15

“**landlord**” in relation to a tenancy agreement that has terminated, means the person who, immediately before the termination, was the landlord in respect of the tenancy agreement.

“**tenant**” in relation to a tenancy agreement that has terminated, means the person who, immediately before the termination, was the tenant in respect of the tenancy agreement. 20

40. Payment out of bonds

(1) The Board must not pay out an amount of bond in the Fund or any part of that amount except— 25

(a) in accordance with an application made to it by or on behalf of a landlord or tenant; or

(b) in accordance with section 42 (5) or 43 (5); or

(c) in accordance with a determination of the Tribunal. 30

(2) An application for payment out of bond must be in a

form approved by the Minister and contain the information prescribed for that kind of application.

41. Automatic payment out

- 5 (1) If an application is made to the Board for payment out of an amount of bond held in the Fund in relation to a tenancy agreement (or of any part of that amount) the Board must make the payment or payments requested by the application without delay if—
- 10 (a) the application is a joint application made by or on behalf of the landlord and tenant; or
- (b) the application is made by or on behalf of the landlord and requests payment to be made to or on account of the tenant only; or
- 15 (c) the application is made by or on behalf of the tenant and requests payment to be made to or on account of the landlord only.
- (2) An application under sub-section (1) (a) or (c) must be signed by the tenant not earlier than 30 days before the termination date in respect of the tenancy agreement.

20 **42. Application by landlord where unpaid rent**

- (1) If an application by or on behalf of the landlord under a tenancy agreement for payment out of an amount of money held in the Fund in relation to a tenancy agreement (or any part of that amount), states that—
- 25 (a) the tenant has delivered up vacant possession of, or abandoned, the rented premises; and
- (b) an amount of rent has accrued due and is unpaid—
the Board must pay to the landlord—
- 30 (c) that part of the amount of bond that is the amount of the rent that has accrued due and is unpaid; or
- (d) if that amount of unpaid rent equals or exceeds the amount of the bond, the whole of the amount of the bond.
- 35 (2) An application under sub-section (1) must be made, in the case of a bond paid under the **Rooming Houses Act**

1990, within 7 days, and in any other case within 14 days, after—

- (a) the tenant delivers up vacant possession of the rented premises; or
 - (b) the landlord becomes aware that the tenant has abandoned the premises. 5
- (3) If the Board makes a payment under sub-section (1), the Board must give notice in writing of the payment to the tenant.
- (4) If an application has been made by a tenant under section 44 in respect of all or part of the amount of bond applied for under sub-section (1), the Board— 10
- (a) must not make the payment directed to or on account of the landlord; and
 - (b) must refer the application to the Tribunal for determination. 15
- (5) If a landlord applies for payment out of only part of the amount of bond held by the Board in respect of the tenancy agreement, the Board must pay the balance of the amount of bond to or on account of the tenant. 20

43. *Application by landlord on other grounds*

- (1) A landlord under a tenancy agreement or a person acting on behalf of the landlord may apply to the Board for payment out of an amount of bond held in the Fund (or any part of that amount) as compensation for loss or damage suffered by the landlord on account of any one or more of the following: 25
- (a) damage caused to the rented premises by the tenant or by a person coming on to the rented premises with the tenant's consent; 30
 - (b) the failure by the tenant to keep the rented premises in a reasonably clean condition;
 - (c) the abandonment of the rented premises by the tenant;

- (d) the liability of the landlord for charges payable by the tenant that are or may be recoverable from the landlord by the person to whom they are owed;
 - (e) any act or omission of the tenant or a person coming on to the rented premises with the tenant's consent that occasioned the loss of goods belonging to the landlord.
- (2) An application under sub-section (1) must be made, in the case of a bond paid under the **Rooming Houses Act 1990**, within 7 days, and in any other case, within 14 days, after—
 - (a) the tenant delivers up vacant possession of the rented premises; or
 - (b) the landlord becomes aware that the tenant has abandoned the premises.
- (3) An application must be accompanied by a copy of the condition report received under section 73 of the **Residential Tenancies Act 1980** or section 14 of the **Rooming Houses Act 1990** or section 14 of the **Caravan Parks and Movable Dwellings Act 1988** (as the case requires).
- (4) On receipt of an application under sub-section (1) the Board—
 - (a) must not make the payment as directed to or on account of the landlord; and
 - (b) must give notice in writing of the application to the tenant; and
 - (c) must refer the application to the Tribunal for determination.
- (5) If a landlord applies for payment out of only part of the amount of bond held by the Board in respect of a tenancy agreement, the Board must pay the balance of the amount of bond to or on account of the tenant.

44. Application by tenant

- (1) If an application to the Board for payment out of an amount of bond held in the Fund in relation to a tenancy

agreement (or of any part of that amount) is made by or on behalf of the tenant and requests payment to be made to or on account of the tenant or partly in that manner and partly to or on account of the landlord, the Board—

- (a) must not make the payment as requested to the tenant; and 5
 - (b) must give notice in writing of the application and of its particulars to the landlord; and
 - (c) must make any payment as requested to the landlord. 10
- (2) If a landlord—
- (a) is given notice under sub-section (1); and
 - (b) has not at the end of, in the case of a bond paid under the **Rooming Houses Act 1990**, 7 days, and in any other case, 14 days, after notice was given— 15
 - (i) filed a notice of objection to the payment with the Board; or
 - (ii) lodged an application under section 42 or 43 in respect of that amount or part of that amount. 20
- the Board must pay to or on account of the tenant the amount of bond of which payment was withheld.
- (3) If an application is made under sub-section (1) and the landlord has filed notice of an objection under section 45 to the payment, the Board must refer that application to the Tribunal for determination. 25
 - (4) If an application is made under sub-section (1) in respect of an amount of bond and the landlord has lodged an application under section 42 or 43 in respect of that amount or part of that amount, the Board must refer both applications to the Tribunal for determination. 30

45. Objections

- (1) A person to whom the Board gives notice under section 42 or 43 may within 14 days after the giving of that notice, file a notice with the Board objecting to the 35

payment or part of the payment and setting out the grounds of the objection.

(2) A person to whom the Board gives notice under section 44 may—

5 (a) in the case of a bond paid under the **Rooming Houses Act 1990**, within 7 days; and

(b) in any other case, within 14 days—

10 after the giving of that notice, file a notice with the Board objecting to the payment or part of the payment and setting out the grounds of the objection.

(3) The Board must refer a notice of objection to the Tribunal for determination.

46. Determination by Tribunal

15 (1) The Tribunal must hear and determine any application or objection referred to it under this Division.

20 (2) **The Residential Tenancies Act 1980** applies to an application or notice of objection which is referred to the Tribunal under this Division as if the application or notice of objection were an application to the Tribunal under that Act.

47. Payments where more than one tenant

If—

25 (a) the tenant under a tenancy agreement is entitled to be paid an amount of bond (including any accumulated entitlement) from the Fund under this Act; and

(b) there is more than one tenant under the tenancy agreement—

30 each tenant is entitled to be paid a proportion of the bond and accumulated entitlement calculated in accordance with the following formula—

$$A \times \frac{B}{C}$$

Where—

A = the total amount of bond and accumulated entitlement referred to in paragraph (a);

B = the contribution to the bond attributed to the tenant in respect of the tenancy agreement; 5

C = the total amount of bond paid to the landlord in respect of the tenancy agreement.

48. *Bond paid on behalf of tenant by Government department or public authority*

If a bond is paid on behalf of a tenant by any government department or public authority, the Board must— 10

(a) give to the government department or public authority (as the case requires) a copy of any notice given to the tenant under this Part; and

(b) pay to the government department or the public authority, as the case requires, and not to the tenant, the whole or that part of the bond to which the tenant is entitled. 15

Division 3—General

49. *Payment of amount where no bond paid to Fund* 20

(1) If a tenant has paid a bond to a landlord or to a person acting on behalf of a landlord under a tenancy agreement, the tenant may apply to the Board for a payment out of the Fund even if the landlord has not deposited the bond with the Board. 25

(2) The Board may authorise the payment of the amount of bond or part of the amount of bond to the tenant out of the Tenancy and Residency General Account if the Board is satisfied—

(a) that the bond had been paid to the landlord by the tenant; and 30

(b) that if the bond had been deposited with the Board, the tenant would have been entitled to the payment under section 44.

- (3) If the Board pays an amount of bond to a tenant under this section—
- (a) the tenant is not entitled to recover that amount from the landlord; and
 - 5 (b) the Board must apply to the Tribunal under section 50 to recover the amount of the bond from the landlord.

50. *Recovery of bond*

- 10 (1) If a landlord under a tenancy agreement has not paid an amount of bond to the Board in contravention of section 33, the Board may apply to the Tribunal for a determination requiring the landlord to pay the amount of bond to the Board.
- 15 (2) The Tribunal may make any determination applied for under sub-section (1).

51. *Assignment of bond*

- 20 (1) If at the end of a tenancy agreement in respect of rented premises all the parties to that tenancy agreement and all the parties to any new tenancy agreement in respect of the rented premises agree in writing to the assignment of the whole or any part of the bond paid under the old tenancy agreement to any tenant under the new tenancy agreement, the bond so assigned must be taken to be the bond paid by the tenant under the new tenancy agreement for the purposes of this Act.
- 25 (2) If during the operation of a tenancy agreement, a tenant assigns any interest in the tenancy agreement to another person, in accordance with that agreement and the **Residential Tenancies Act 1980** (where applicable), the assignor's entitlement to repayment of the bond from the Fund passes to the assignee.
- 30 (3) The assignee must give notice in writing to the Board of any assignment referred to in sub-section (1) or (2).

52. Statements

- (1) Any tenant or landlord under a tenancy agreement or any body referred to in section 48 which has paid a bond on behalf of a tenant under a tenancy agreement may apply to the Board for a written statement setting out the amount of bond held in the Fund in respect of that tenancy agreement or in respect of a tenant under that tenancy agreement at the date of the statement. 5
- (2) The Board may provide a statement under sub-section (1) on payment of the fee approved by the Minister. 10

53. Unclaimed money

If the Board is required under this Part to pay to a person the amount or part of the amount of a bond but is unable to do so because the whereabouts of the person are unknown to the Board, the amount or part shall be regarded as unclaimed money and dealt with in accordance with Part II of the **Unclaimed Moneys Act 1962** as if the Board were a company or firm to which that Part applies. 15

54. Manner of payment 20

If the Board is required by this Part to make a payment to or on account of any person, the Board may make the payment in accordance with that person's directions.

55. Notice

- (1) It is sufficient notice to a tenant under this Part if the Board gives notice to the tenant at the last known place of residence of the tenant. 25
- (2) If there is more than one tenant under a tenancy agreement it is sufficient notice under this Part to all of the tenants if the Board gives notice to one of the tenants. 30
- (3) It is sufficient notice to a landlord under this Part if the Board gives notice to the landlord at the last known place of residence or business of the landlord or at any

address provided by the landlord to the Board as the landlord's address for service of notices.

56. Prohibition of claims

- 5 (1) No further claim lies against the Board or the Fund in respect of an amount of bond once the Board has in good faith and in accordance with this Part paid that amount out of the Fund.
- 10 (2) Nothing in sub-section (1) prevents any person from taking proceedings against any person to whom an amount of bond was paid out of the Fund to recover that amount or part of that amount.
- (3) No further claim lies against a landlord by a tenant in respect of an amount of bond, once the Board has paid that amount to the tenant.

15 **57. Offence to give false information to Board**

A person must not make a false or fraudulent misrepresentation in any document deposited, lodged or filed with the Board under this Part.

Penalty: \$2000.

20 **PART 5—REGULATIONS**

58. Regulations

25 The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.

**PART 6—AMENDMENTS TO RESIDENTIAL TENANCIES
ACT 1980**

59. Definitions

30 In section 2 of the **Residential Tenancies Act 1980—**
(a) the definition of “**Approved institution**” is repealed;

(b) before the definition of “Child” insert—

“**bond**” means the sum of the amounts paid or payable under or in respect of a tenancy agreement (not being rent or an insurance premium) by or on behalf of the tenant as security against a failure by the tenant to comply with the tenancy agreement or any of the provisions of this Act relating to the tenancy agreement.’;

(c) the definition of “Fund” is repealed;

(d) the definition of “Security deposit” is repealed.

60. Functions of Director

In section 11 (1) (f) of the **Residential Tenancies Act 1980** omit “, and to provide financial assistance from the Fund to,”.

61. Annual report

In section 13 of the **Residential Tenancies Act 1980**—

(a) for “or the **Caravan Parks and Movable Dwellings Act 1988** or the **Rooming Houses Act 1990**” (where first occurring) substitute “Parts 2 to 5 of the **Caravan Parks and Movable Dwellings Act 1988**, the **Rooming Houses Act 1990** and the **Rental Bond Board Act 1991**”; and

(b) after “**Rooming Houses Act 1990**” (where secondly occurring) insert “or the **Rental Bond Board Act 1991**”.

62. Rent Special Account

In the heading to Division 3 of Part II of the **Residential Tenancies Act 1980** for “Residential Tenancies Fund” substitute “Rent Special Account”.

63. *New section 49 substituted*

For section 49 of the **Residential Tenancies Act 1980** substitute—

‘49. *Establishment of Account*

5 There shall be kept in the Treasury in the Public Account as part of the Trust Fund an account to be called the “Rent Special Account”.’.

64. *Sections 50 and 51 repealed*

10 Sections 50 and 51 of the **Residential Tenancies Act 1980** are repealed.

65. *Treasurer’s powers and duties*

In section 52 of the **Residential Tenancies Act 1980**—

- 15 (a) in paragraph (a) for “Fund” substitute “Rent Special Account”; and
 (b) in paragraph (b) for “Fund” substitute “Consolidated Fund”.

66. *Payment into and out of Rent Special Account*

In section 53 of the **Residential Tenancies Act 1980**—

- 20 (a) for sub-section (1) substitute—
 “(1) There shall be paid into the Rent Special Account all money paid pursuant to a determination of the Tribunal authorising a tenant under a tenancy agreement to pay rent into that Account.”; and
25 (b) in sub-section (2) for “Notwithstanding anything to the contrary in section 51, moneys” substitute “Money”.

67. *Section 54 repealed*

30 Section 54 of the **Residential Tenancies Act 1980** is repealed.

68. Amendment of heading to Part III

- (1) In the heading to Part III of the **Residential Tenancies Act 1980** for “**SECURITY DEPOSITS**” substitute “**BONDS**”.

69. Amendment of heading to Division 3 of Part III

5

In the heading to Division 3 of Part III of the **Residential Tenancies Act 1980** for “**Security Deposits**” substitute “**Bonds**”.

70. Receipt for rent

In section 61 of the **Residential Tenancies Act 1980**— 10

(a) for sub-section (1) substitute—

“(1) A person who receives a payment of rent under a tenancy agreement must give a receipt in accordance with sub-sections (1A) and (2) to the person who made the payment. 15

Penalty: \$100.

(1A) A receipt under sub-section (1) must be given—

(a) immediately, if payment is made in person and in cash; or

(b) immediately, if payment is made in person, otherwise than in cash, and a receipt is requested; or 20

(c) within 5 days of receiving the payment, if the payment is not made in person and a receipt is requested.”; 25

(b) in sub-section (2) omit “Penalty: \$100”;

(c) in sub-section (3) after “(1)” insert “, (1A)”.

71. Sections 65 to 69 repealed

Sections 65 to 69 of the **Residential Tenancies Act 1980** are repealed. 30

72. Maximum bond

In section 70 of the **Residential Tenancies Act 1980**—

(a) for “security deposit” (wherever occurring) **substitute** “bond”; and

5 (b) after sub-section (5) **insert**—

“(6) Nothing in this section affects the right of the Rental Bond Board to accept the payment of a bond under the **Rental Bond Board Act 1991**.”.

73. Bonds

10 In sections 71 to 75 of the **Residential Tenancies Act 1980** for “security deposit” (wherever occurring) **substitute** “bond”.

74. Receipts for bonds

In section 76 of the **Residential Tenancies Act 1980**—

15 (a) for sub-section (1) **substitute**—

“(1) A person who receives payment of a bond in respect of a tenancy agreement must give a receipt in accordance with sub-sections (1A) and (2) to the person who made the payment.

20 Penalty: \$100.

(1A) A receipt under sub-section (1) must be given—

(a) immediately, if payment is made in person and in cash; or

25 (b) immediately, if payment is made in person, otherwise than in cash, and a receipt is requested; or

(c) within 5 days of receiving the payment, if the payment is not made in person and a receipt is requested.”;

30 (b) in sub-section (2)—

(i) for “security deposit” (wherever occurring) **substitute** “bond”;

(ii) after paragraph (e) **insert**—

- “(f) if the bond was paid by or on behalf of more than one tenant, the proportion of the bond attributed to each tenant.”;
- (iii) omit “Penalty: \$100”.
- (c) after sub-section (2) insert— 5
- “(3) In the absence of information to the contrary, each tenant under a tenancy agreement is to be taken to have contributed equally to the bond.”.
- 75. Sections 77 and 78 repealed** 10
- Sections 77 and 78 of the **Residential Tenancies Act 1980** are repealed.
- 76. Amendment of section 79**
- In section 79 of the **Residential Tenancies Act 1980** for “security deposit” (where twice occurring) substitute “bond”. 15
- 77. Amendment of section 101**
- In section 101 (1) and (2) of the **Residential Tenancies Act 1980** omit “in the Fund”.
- 78. Amendment of sections 106 and 119** 20
- In sections 106 (1) (c), 106 (2) and 119 (2) (a) of the **Residential Tenancies Act 1980** for “security deposit” (wherever occurring) substitute “bond”.
- PART 7—AMENDMENTS TO CARAVAN PARKS AND MOVABLE DWELLINGS ACT 1988** 25
- 79. Bonds**
- For section 14 (5) of the **Caravan Parks and Movable Dwellings Act 1988** substitute—
- “(5) A resident must not refuse to pay rent or a hiring charge on the ground that he or she intends to regard as rent or a hiring charge paid by him or her 30

the bond or any part of the bond given by him or her in respect of the site or caravan.

Penalty: 2 penalty units.”.

80. *Repeal of section 15*

5 Section 15 of the **Caravan Parks and Movable Dwellings Act 1988** is repealed.

81. *Receipts*

In section 16 of the **Caravan Parks and Movable Dwellings Act 1988**—

10 (a) for “16. A” substitute “16 (1) A”; and

(b) at the end of the section insert—

15 “(2) If a bond was paid by or on behalf of more than one resident, a receipt under sub-section (1) must state the proportion of the bond attributed to each resident.

(3) In the absence of information to the contrary, each resident by or on behalf of whom a bond is paid is to be taken to have contributed equally to the bond.”.

20 **82. *Amendment of section 26 (5)***

In section 26 (5) of the **Caravan Parks and Movable Dwellings Act 1988** for “Residential Tenancies Fund” substitute “Tenancy and Residency General Account under the **Rental Bond Board Act 1991**.”

25 **83. *Section 60A repealed***

Section 60A of the **Caravan Parks and Movable Dwellings Act 1988** is repealed.

**PART 8—AMENDMENTS TO THE ROOMING HOUSES ACT
1990**

84. Bonds

For section 14 (5) of the **Rooming Houses Act 1990**
substitute—

5

“(5) A resident must not refuse to pay rent on the ground that he or she intends to regard as rent paid by him or her the bond or any part of the bond given by him or her in respect of the room.”.

85. Repeal of section 15

10

Section 15 of the **Rooming Houses Act 1990** is repealed.

86. Receipts

In section 16 of the **Rooming Houses Act 1990—**

(a) after sub-section (2) (e) **insert—**

“(f) in the case of a bond which was paid by or on behalf of more than one resident, the proportion of the bond attributed to each resident.”; and

15

(b) after sub-section (2) **insert—**

“(3) In the absence of information to the contrary, each resident by or on behalf of whom a bond is paid is to be taken to have contributed equally to the bond”.

20

87. Duty in relation to left goods

In section 21 (5) of the **Rooming Houses Act 1990** for “Residential Tenancies Fund” **substitute** “Tenancy and Residency General Account in the Tenancy and Residency Fund established under the **Rental Bond Board Act 1991**”.

25

88. Application for compensation

5 In section 41 (12) of the **Rooming Houses Act 1990** for
“Residential Tenancies Fund established under the
Residential Tenancies Act 1980” substitute “Tenancy
and Residency General Account in the Tenancy and
Residency Fund established under the **Rental Bond
Board Act 1991**”.

89. Tenancy and Residency Account

10 In section 53 of the **Rooming Houses Act 1990**—
(a) for “Director” substitute “Rental Bond Board”; and
(b) for “Residential Tenancies Fund under the
Residential Tenancies Act 1980” substitute
15 “Tenancy and Residency General Account in the
Tenancy and Residency Fund established under
the **Rental Bond Board Act 1991**”.

PART 9—TRANSITIONAL

90. Definition

In this Part “**relevant day**” means the day which is 6
months after the date of commencement of this section.

20 **91. Residential Tenancies Fund**

On the commencement of this section—

- 25 (a) all money standing to the credit of the Residential
Tenancies Fund under the **Residential Tenancies
Act 1980** (other than money in the Rent Special
Account) immediately before that commencement
is transferred to and forms part of the Tenancy and
Residency General Account;
- 30 (b) all claims existing against the Residential Tenancies
Fund (other than the Rent Special Account) under
any Act immediately before that commencement
shall become claims against the Tenancy and
Residency General Account.

92. Rent Special Account

On the commencement of this section—

- (a) all money standing to the credit of the Rent Special Account in the Residential Tenancies Fund under the **Residential Tenancies Act 1980** immediately before that commencement is transferred to and forms part of the Rent Special Account established under section 53 of that Act as amended by this Act; 5
- (b) all claims existing against the Rent Special Account under any Act immediately before that commencement shall become claims against the Rent Special Account established under section 53 of that Act as amended by this Act. 10

93. Security deposits 15

- (1) A landlord who is the holder of a security deposit under the **Residential Tenancies Act 1980** immediately before the commencement of this section must pay the amount of the security deposit to the Rental Bond Board under this Act on or before the relevant day. 20

Penalty: \$5000.

- (2) Sub-section (1) does not apply to—
 - (a) any amount of security deposit which is paid to a tenant before the relevant day; or
 - (b) any amount of security deposit to which the landlord becomes entitled under section 77 (1) of the **Residential Tenancies Act 1980** before the relevant day; or 25
 - (c) any amount of security deposit to which the landlord is entitled pursuant to a determination made by the Residential Tenancies Tribunal under section 77 (6) of that Act before the relevant day. 30
- (3) Sub-section (1) applies despite any other law, any tenancy agreement or any other contract relating to the bond.
- (4) Despite anything to the contrary in this Act, Division 3 of Part III of the **Residential Tenancies Act 1980** as in 35

force immediately before the commencement of this section continues to apply in respect of an amount of security deposit to which sub-section (1) applies until—

5 (a) the payment of that amount to the Rental Bond Board under sub-section (1); or

(b) the relevant day—

whichever is the earlier.

10 (5) On and from the relevant day or the payment of the amount of security deposit to the Rental Bond Board, whichever is the earlier, this Act applies to an amount of security deposit to which sub-section (1) applies as if the amount of security deposit were an amount of bond.

15 (6) The Rental Bond Board must pay any amount of security deposit received by it under this section into the Bond Account.

(7) A trust account maintained under section 67 of the **Residential Tenancies Act 1980** may be closed upon payment of all amounts of security deposit out of the account pursuant to sub-sections (1) and (2).

20 **94. Loans**

Despite anything to the contrary in this Act, section 54 of the **Residential Tenancies Act 1980** as in force immediately before the commencement of this section continues to apply in respect of any loan made under that section before that commencement as if—

25 (a) any condition of that loan requiring repayment of the loan to the Residential Tenancies Fund were a condition requiring repayment of the loan to the Tenancy and Residency General Account; and

30 (b) the reference to the Fund in section 54 (3) of that Act were a reference to the Tenancy and Residency General Account.

95. Maximum amount of security deposit

35 Despite anything to the contrary in this Act, any request or application under section 71 of the **Residential**

Tenancies Act 1980 in relation to a security deposit which had not been determined before the commencement of this section may be determined under that section as amended by this Act as if it were a request or application in relation to a bond. 5

96. Bonds—Caravan Parks and Movable Dwellings Act 1988

- (1) A caravan park owner or caravan owner who holds a bond under the **Caravan Parks and Movable Dwellings Act 1988** immediately before the commencement of this section must pay the amount of the bond to the Rental Bond Board under this Act on or before the relevant day. 10

Penalty: \$5000.

- (2) Sub-section (1) does not apply to—
- (a) any amount of bond which is paid to a resident before the relevant day; or 15
 - (b) any amount of bond to which the caravan park owner or caravan owner is entitled under section 15 (1A) or (1C) of the **Caravan Parks and Movable Dwellings Act 1988**; or 20
 - (c) any amount of bond to which the caravan park owner or caravan owner is entitled pursuant to a determination made by the Residential Tenancies Tribunal under section 15 of the **Caravan Parks and Movable Dwellings Act 1988** before the relevant day. 25
- (3) Sub-section (1) applies despite any other law, or any agreement, arrangement or contract relating to the bond.
- (4) Despite anything to the contrary in this Act, sections 14 (5) and 15 of the **Caravan Parks and Movable Dwellings Act 1988** as in force immediately before the commencement of this section continue to apply in respect of an amount of bond to which sub-section (1) applies until— 30
- (a) the payment of that amount to the Rental Bond Board under sub-section (1); or 35

(b) the relevant day—

whichever is the earlier.

- 5 (5) On and from the relevant day or the payment of the amount of bond to the Rental Bond Board, whichever is the earlier, this Act applies to an amount of bond to which sub-section (1) applies.
- (6) The Rental Bond Board must pay any amount of bond received by it under this section into the Bond Account.
- 10 (7) A trust account maintained under Part 2 of the **Caravan Parks and Movable Dwellings Act 1988** may be closed upon payment of all amounts of bond out of the account pursuant to sub-sections (1) and (2).

97. Bonds—Rooming Houses Act 1990

- 15 (1) A rooming house owner who holds a bond under the **Rooming Houses Act 1990** immediately before the commencement of this section must pay the amount of the bond to the Rental Bond Board under this Act on or before the relevant day.

Penalty: \$5000.

- 20 (2) Sub-section (1) does not apply to—
- (a) any amount of bond which is paid to a resident before the relevant day; or
- 25 (b) any amount of bond to which the rooming house owner is entitled under section 15 (2) or (4) of the **Rooming Houses Act 1990** before the relevant day; or
- 30 (c) any amount of bond to which the rooming house owner is entitled pursuant to a determination made by the Residential Tenancies Tribunal under section 15 of the **Rooming Houses Act 1990** before the relevant day.
- (3) Sub-section (1) applies despite any other law or any agreement or contract relating to the bond.
- 35 (4) Despite anything to the contrary in this Act, sections 14 (5) and 15 of the **Rooming Houses Act 1990** as in force

immediately before the commencement of this section continue to apply in respect of an amount of bond to which sub-section (1) applies until—

- (a) the payment of that amount to the Rental Bond Board under sub-section (1); or
- (b) the relevant day—

5

whichever is the earlier.

- (5) On and from the relevant day or the payment of the amount of bond to the Rental Bond Board, whichever is the earlier, this Act applies to an amount of bond to which sub-section (1) applies.
- (6) The Rental Bond Board must pay any amount of bond received by it under this section into the Bond Account.
- (7) A trust account maintained under Part 2 of the **Rooming Houses Act 1990** may be closed upon payment of all amounts of bond out of the account pursuant to sub-sections (1) and (2).

10

15

98. *Interim payments from Residential Tenancies Fund*

Until the commencement of Part 3, all money required for the remuneration of members of the Board and the costs of administration of this Act shall be paid out of the Residential Tenancies Fund established under the **Residential Tenancies Act 1980**.

20