

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN
CAPITAL TERRITORY**

RESIDENTIAL TENANCIES BILL 1997

EXPLANATORY MEMORANDUM

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ACT GOVERNMENT

Residential Tenancies Bill 1997

OUTLINE

The Residential Tenancies Bill implements many of the recommendations made by the Community Law Reform Committee (CLRC) in Report No. 8: Private Residential Tenancy Law (December 1994).

The Bill seeks to balance the interests of the parties to a residential tenancy agreement and to provide a framework for residential tenancy agreements. The Bill will apply to public housing ensuring the consistent application of standards in private and public tenancies.

The Bill provides a framework for residential tenancy agreements by prescribing terms which are to apply to every agreement unless, in a departure from the CLRC recommendations, the agreement is expressly varied following independent legal advice. The prescribed terms are detailed in the schedule to the Bill and define the rights and obligations of the parties. The Bill incorporates existing procedures relating to the lodgment and management of bond monies.

Eviction proceedings are clarified, recognising the interests of both landlords and tenants, detailing the specific circumstances in which a tenancy may be terminated. While a tenancy can terminate through agreement, the Bill provides that eviction can only occur by order of the Residential Tenancies Tribunal following a structured process.

The Bill regulates the manner in which increases in rent may be imposed. Excessive increases in rent may be reviewed by the Residential Tenancies Tribunal.

The Residential Tenancies Bill details dispute resolution processes. The processes prescribed require the Residential Tenancies Tribunal to facilitate various dispute resolution procedures including direct negotiation with the parties. All disputes are evaluated and where appropriate referred for mediation. The Bill enables the Tribunal to conciliate disputes through a process of preliminary

conferences. Where appropriate Referees who conduct conferences may determine certain categories of dispute. The Bill requires that the practice and procedure of the Tribunal be as simple and informal as possible. The dispute resolution processes seek to ensure that the parties to any dispute are properly informed as to their rights and obligations.

Revenue Cost Implications

The measures in this Bill replace existing measures. There is expected to be no overall cost implications.

DETAILS OF THE BILL

References to "Recommendations" through this memorandum are references to the numbered recommendations of the Community Law Reform Committee ("CLRC" or "Committee") made in Report No. 8: Private Residential Tenancy Law (December 1994).

PART I - PRELIMINARY

Short title

Clause 1 states the short title of the Bill. Comparable legislation in South Australia, Western Australia, Victoria and New South Wales have the title of "Residential Tenancies Act". In the past, comparable laws have been named "Landlord and Tenant Acts". The word "landlord" derives from medieval times. It is singularly inappropriate in today's society. Those considered "landlords" are simply the lessors or owners of a residential property.

Commencement

Clause 2 sets the dates of commencement of different sections of the Bill. It is not anticipated that a delayed commencement will be required, however extra time may be required to establish the revised administrative arrangements and educative programs.

Interpretation

Clause 3 *Sub-clause (1) defines terms used in the Bill. In particular, the definition of "residential tenancy agreement" implements the second part of Recommendation 1 - that a tenancy agreement may exist whether or not the agreement entitles the tenant to exclusive possession of the premises and Recommendation 2 - that the Bill should apply to people who intend a legally binding tenancy agreement for value.*

Sub-clause (2) implements Recommendation 20 - that a tenancy agreement should commence on the earliest of the following dates:

- the date of commencement nominated in the tenancy agreement;
- the date on which both parties sign the tenancy agreement and obtain a copy of the signed agreement;
- the date on which the tenant occupies the premises; or
- the date on which the lessor first receives rent from the tenant.

Application of Act

Clause 4 implements the first part of Recommendation 1 - that the Bill should apply in every case where people enter into an agreement for the rental of residential premises.

Not applicable to certain agreements

Clause 5 Paragraph (c) deals with Recommendation 15 - that the Bill should apply to co-operative housing. At this stage co-operative housing has been excluded from the application of the Bill pending further consideration by the Committee.

Paragraphs (d) and (e) implement part of Recommendation 1 - that the Bill should not apply to:

- borders and lodgers; or
- holiday accommodation,

Not applicable to certain premises

Clause 6 Sub-clause (1) implements part of Recommendation 1 - that the Bill should not apply to:

- hotels and motels (paragraph (b));
- student accommodation provided by educational institutions (paragraph (d));
- clubs (paragraph (c));
- caravan parks (paragraph (a));
- retirement villages (paragraph (e));
- crisis accommodation (paragraph (g));
- accommodation for aged and disabled persons that is regulated by Commonwealth legislation (paragraph (f));
- other premises excluded from the operation of the Act by the Minister by means of disallowable instrument (the disallowable instrument in this case is regulations) (paragraph (j)).

Sub-clause (2) implements Recommendation 14 - that the Bill should apply to employment related housing.

PART II - RESIDENTIAL TENANCY AGREEMENTS

Division 1 - Terms of agreement

Standard terms

Clause 7 Paragraph (a) implements Recommendation 16 - that prescribed terms should apply to every tenancy agreement, whether agreed to by the parties or not.

Paragraph (b) deals with Recommendation 17 - that terms can be added to the prescribed terms to suit individual needs provided these terms do not conflict with the prescribed terms. It was decided that people should be able to agree to terms that are inconsistent with the prescribed terms but only with independent legal advice.

Inconsistent terms void

Clause 8 deals with Recommendation 19 - that terms contained in a tenancy agreement which conflict with the prescribed terms should be void. It was decided that people should be able to agree to terms that are inconsistent with the prescribed terms provided they have received independent legal advice. Consequently, terms which are inconsistent with the prescribed terms are only void if the parties have not received legal advice about their nature and effect.

Division 2 - Pre-contractual obligations

Compliance

Clause 9 ensures the pre-contractual obligations set out in the rest of this Division are complied with by the parties and the parties' agents.

Lessor's obligations

Clause 10 Sub-clause (1) ensures the tenant is supplied with the proposed tenancy agreement and the prescribed terms and is given time to consider the agreement.

Subclause (2) requires any terms in the proposed agreement which are inconsistent with the prescribed terms to be marked in such a way as to draw the tenant's attention to the fact that they are inconsistent terms.

Sub-clause (3) implements Recommendations 25 and 26:
(a) implements Recommendation 25 - that the lessor should be required to state her or his full name in the tenancy

agreement (The tenant is required to do the same in Clause 11.)

(b) implements the first part of Recommendation 26 - that the lessor should be obliged to nominate an address for service in the tenancy agreement.

Tenant's obligations

Clause 11 implements Recommendation 25 - that the tenant should be required to state her or his full name in the tenancy agreement. (The lessor is required to do the same in Clause 10.)

Agent's obligations

Clause 12 requires an agent of a party to provide his or her name to the other party and to identify themselves as an agent. If the Agent is a company, the name of a contact person must be provided also. The purpose of these sections is to ensure all parties involved in the tenancy process and their roles are clearly identified.

Division 3 - Consideration

Rent or a bond only

Clause 13 implements Recommendation 36 - that, apart from rent or bond, lessors should be prohibited from requiring tenants or prospective tenants to:

- pay a fee;
 - make other payment (such as goods); or
 - make any improvements, alterations or repairs to the premises,
- for:
- the granting, extension, transfer or renewal of a tenancy or subtenancy;
 - vacating the premises;
 - obtaining a key to the premises; or
 - information on the availability of premises.

Alternative to a bond: guarantee or indemnity

Clause 14 deals with the first parts of Recommendation 43 - that.

- the lessor and tenant should be permitted to agree to a third party acting as surety for the tenant (either through a contract of guarantee or a contract of indemnity) in place of payment of a bond by the tenant,

- the lessor and tenant should not be permitted to agree to a surety if the tenant has paid a bond and that any such contract should be void regardless of whether the bond is paid before or after the contract is agreed to; and
- that the liability of the surety should not extend beyond the maximum amount of money that the lessor could have required as a bond and the liability to pay for those losses for which the lessor could have sought deductions from a bond at the end of the tenancy had a bond been paid.

These have been combined so that a lessor and tenant can agree to have both a bond and a surety providing the two together do not exceed the maximum amount that would have been payable by the tenant as a bond.

Alternative to a bond: insurance

Clause 15

deals with Recommendation 42 - that, as a matter of principle, tenants should be able to choose to pay an insurance premium instead of a bond. The insurance policy should cover the lessor against the type and amount of potential loss which the bond would have covered.

This clause also allows insurance to be taken out in addition to a bond for the difference between the bond actually paid and the maximum bond that would have been payable.

Only insurance payments prescribed in the regulations may be used for this purpose.

Holding deposits

Clause 16

deals with Recommendation 37 - that holding deposits should be prohibited except in very limited circumstances. After considering further representations from the stakeholders regarding this recommendation, the CLRC agreed to prohibit holding deposits absolutely. Consequently, this clause prohibits holding deposits.

Division 4 - Lessor's obligations on signing agreement

Copy of agreement to be given to tenant

Clause 17 implements Recommendation 29 - that the lessor should be required to provide the tenant with a copy of the fully executed tenancy agreement within three weeks of the time that the tenant signs and forwards the unexecuted agreement to the lessor for signature, or as soon as reasonably practicable thereafter.

PART III - BONDS

Division 1 - Payment of bonds

Maximum amount payable

Clause 18 implements Recommendation 45 - that the bond for all tenancy agreements should not exceed four weeks' rent

Only 1 bond per tenancy agreement

Clause 19 implements Recommendation 44 - that only one bond may be required in relation to a tenancy agreement.

Successive tenancy agreements

Clause 20 prohibits the taking of a new bond if at least one of the new tenants is a tenant from the previous tenancy agreement and the bond from the previous tenancy agreement has not been released.

This clause reflects the Committee's view regarding successive tenancies presented in Recommendation 61 (regarding the 12 month restriction on rent increases).

Division 2 - Depositing bond

Deposit of Bond by lessor

Clause 21 together with Clause 22 implements Recommendation 49 - that either the tenant or the lessor should be able to lodge the bond provided that:

- the lessor is not required to agree to lodgment by the tenant, and
- where the lessor receives the bond money from the tenant, the current rules and procedures should apply to the lessor

Deposit of bond by tenant

Clause 22 together with Clause 21 implements Recommendation 49 - that either the tenant or the lessor should be able to lodge the bond provided that:

- the lessor should not be required to agree to lodgment by the tenant;
- where the tenant is to lodge the bond, the tenant should not be entitled to possession of the premises until the lessor receives evidence of lodgment of the bond (unless the lessor otherwise agrees);

an original receipt from the lodgement office should constitute evidence of lodgment by the tenant.

Notice accompanying deposit

Clause 23 indicates that there is a form for the notice to accompany the bond when being deposited and lists the four critical pieces of information which must appear on the notice.

Acknowledgment of receipt of bond money

Clause 24 requires the Territory to issue a receipt and give the other party a copy of the notice accompanying the bond after the bond has been deposited.

Payment of bond money into trust account

Clause 25 requires the bond money received by the Territory to be paid into a trust account and only used for payment of bond money to the parties pursuant to clauses 32 and 33.

Interest

Clause 26 provides that interest earned from rental bonds in excess of administrative requirements may be used for certain purposes.

Division 3 - Condition of premises and deductions from bond

Condition reports

Clause 27 requires the lessor to give at least 3 signed copies of the condition report to the tenant within 1 day of the tenant taking possession of the premises. The tenant must return 2 of the copies within 7 working days either signed or stating how the tenant disagrees with the report. If the tenant fails to state how she or he disagrees with the report, the tenant will be considered to have agreed with the report. The lessor must then pass on 1 copy to the Director.

Evidence of condition of premises

Clause 28 provides for 3 different situations:

- if the lessor has given at least 3 signed copies of the condition report to the tenant within 1 day of the tenant taking possession of the premises, and the tenant has signed and returned 2 of the copies within 7 working days, then the statements in the condition report are evidence of the condition of the premises as at the day the tenant received the condition reports;
- if the lessor has given at least 3 signed copies of the condition report to the tenant within 1 day of the tenant taking possession of the premises but nothing else has happened, then the statements in the condition report are evidence of the condition of the premises as at the day the tenant received the condition reports; and
- if the lessor fails to give at least 3 signed copies of the condition report to the tenant within 1 day of the tenant taking possession of the premises, the evidence of the tenant is evidence of the condition of the premises as at the day the tenant took possession of the premises

Deductions from bond

Clause 29 implements the first part of Recommendation 48 - that the lessor should be able to claim deductions from the bond for.

- the cost of repairs necessary as a result of damage to the premises caused by the tenant (other than fair wear and tear);
- loss of rent up to and including the date of termination of the tenancy or abandonment of the premises;
- loss of wood, gas or other fuel supplied by the lessor at the commencement of the tenancy which the tenant has used but not replaced; and

- costs incurred for consumption by the tenant of a commodity such as water, if the lessor is liable to the supply authority for payment and the tenant has not paid the lessor for the consumption costs .

Division 4 - Release of bond money

Application for release

Clause 30 implements Recommendation 51 - that the agreement should contain specific information as to the right of the lessor and tenant to lodge a return of bond claim form independently of the approval of the other party.

Notification of application

Clause 31 ensures the other party is notified of any application for release of the bond.

Release where no dispute or where order

Clause 32 Sub-clause (1) requires the Territory to pay out the bond money if:

- a joint application is made;
- the other party does not dispute the application within 14 days of notification of the application for the bond money to be paid out; or
- the application is in accordance with an order of the Tribunal.

This clause also implements Recommendation 50 - that the statutory period for disputing a bond claim should continue to be 14 days.

Sub-clause (2) limits the amount of bond money paid out to a party to the amount of bond money paid into the trust account under that tenancy agreement.

Disputes as to whole or part of bond

Clause 33 Sub-clause (1) requires the matter to be referred to the Registrar if the other party disputes the application within 14 days of notification of the application for the bond money to be paid out. If the application is in accordance with an order of the Tribunal the matter is not referred.

This clause also implements Recommendation 50 - that the statutory period for disputing a bond claim should continue to be 14 days.

Sub-clause (2) requires any portion of the bond that is not in dispute to be paid out before the matter is referred to the Registrar.

PART IV - TERMINATION OF RESIDENTIAL TENANCY AGREEMENTS

Division 1 - General

Termination

Clause 34 states that a tenancy agreement does not terminate other than in the circumstances described.

Paragraphs (c) and (d) implement the first part of Recommendation 130 - that the lessor should be prohibited from evicting a tenant without first gaining a Tribunal order for termination of the tenancy and possession.

Paragraph (g) implements the first part of Recommendation 131 - that lessor and tenant should be able to agree to terminate the tenancy at any time. If the lessor and tenant do so agree, then the tenancy shall terminate on the agreed date. The agreement should be valid whether in writing or not. An agreement to terminate the tenancy should bind both the tenant and the lessor unless they both agree to its withdrawal before the agreed date of termination

Entry for eviction purposes

Clause 35 deals with the first point in Recommendation 176 that the Tribunal should have the power to impose a civil penalty up to \$5 000 for eviction without order of the Tribunal. The valid circumstances for eviction have been expanded to include a warrant from the Registrar, a warrant from the Tribunal, and an order or judgement from the Supreme Court.

This clause also implements Recommendation 181 - that the Tribunal should have the power to award compensation to the tenant for the direct financial cost to the tenant for wrongful eviction

General duty to mitigate

Clause 36 requires that any loss suffered by any party should be mitigated. The Committee anticipated such a provision in Recommendation 172.

Content of termination and possession orders

Clause 37 implements the first 2 points of Recommendation 161 - that the Tribunal should be required to make the following orders with respect to termination of the tenancy:

- the tenancy shall terminate on a particular day [to be determined by the Tribunal] and the tenant is required to vacate the premises on or before that day;
- If the tenant does not vacate the premises as required then a warrant shall issue for the eviction of the tenant.

Division 2 - Warrants for eviction

Content

Clause 38 implements the fifth point in Recommendation 161 - that the police should give the tenant at least two days notice of the eviction [the Tribunal may vary this requirement where appropriate in unusual circumstances].

Unconditional orders

Clause 39 implements the third point in Recommendation 161 - that the registrar shall execute this warrant upon the lessor proving to the satisfaction of the registrar that the tenant has not vacated the premises as required. This clause also implements the first point in Recommendation 162 - that where the tenant fails to meet rental repayments required by the Tribunal the proposed Residential Tenancies Act should provide that the lessor may apply to the registrar for execution of a warrant for the eviction of the tenant.

Conditional orders

Clause 40 implements the third point in Recommendation 161 - that the registrar shall execute this warrant upon the lessor proving to the satisfaction of the registrar that the tenant has not vacated the premises as required. This clause also implements the first point in Recommendation 162 - that where the tenant fails to meet rental repayments required by the Tribunal then the proposed Residential Tenancies Act should provide that the lessor may apply to the registrar for execution of a warrant for the eviction of the tenant.

Division 3 - Termination initiated by tenant

Breach of prescribed terms

Clause 41 Clause 89 of the Schedule to the Bill provides the tenant with 2 options for termination of the tenancy agreement if the lessor breached a prescribed term:

- apply to the Tribunal for an order terminating the tenancy; or
- give the lessor a written notice of intention to terminate the tenancy.

Clause 91 of the Schedule to the Bill states that if the tenant proceeds by way of notice of intention to terminate, that specified procedures apply. The procedures specified implement Recommendation 167.

This clause provides a procedure for the tenant when proceeding by way of application to the Tribunal.

Significant hardship

Clause 42 implements a provision for tenants corresponding to the provision for lessors in Recommendation 149 - that the lessor should be able to apply to the Tribunal for early termination of the tenancy on the basis that if the tenancy were to continue the lessor would suffer severe hardship. The Tribunal may terminate the lease after considering the hardship the lessor would suffer if the tenancy were to continue compared to the hardship the tenant would suffer if the tenancy were to terminate. Matters which might, at the most serious level, be taken into consideration include the breakdown of a domestic relationship between the tenants, the occurrence of domestic violence (perhaps evidenced by a court order), the need to move premises for health reasons, the loss of income or employment or a change of employment.

Damage, injury or intention to damage or injure

Clause 43 implements Recommendation 168 - that the tenant should be able to apply to the Tribunal for an urgent hearing to terminate the tenancy where the tenant's property is at serious risk of severe damage or the tenant or a member of the tenant's family who also resides on the premises, has suffered or is likely to suffer injury as a result of the lessor's breach of the proposed Act.

The Tribunal should have a discretion to terminate the tenancy if it is satisfied that the lessor has intentionally or

recklessly caused or permitted, or is likely to intentionally or recklessly cause or permit:

- serious damage to the tenant's property; or
- injury to the tenant or a member of the tenant's family.

False or misleading statements

Clause 44 allows the Tribunal to terminate a tenancy if the lessor used false or misleading statements to induce the tenant to agree to the tenancy.

Division 4 - Termination Initiated by lessor

No breach of prescribed terms

Clause 45 allows the Tribunal to grant a termination and possession order if:

- there is a ground for termination under the prescribed terms other than breach of the prescribed terms;
- the lessor has appropriately served a termination notice on the tenant; and
- the tenant has not vacated.

Certain breaches of prescribed terms

Clause 46 Subclause (1) implements the Committee's recommendation that the Tribunal may make termination and possession orders on the application of the lessor if satisfied that:

- the tenant breached a term of the prescribed terms (other than failure to pay rent);
- the lessor served a notice of termination specifying the grounds of the breach in accordance with the prescribed terms;
- the tenant did not vacate the premises as required by the notice; and
- the breach is in the circumstances such as to justify termination of the tenancy (Recommendation 157).

Sub-clause (2) implements Recommendation 157 - that the Tribunal should be able to:

- refuse to terminate the tenancy on the basis that the tenant has remedied the breach, if it considers it appropriate and just to do so in the circumstances;
- refuse to terminate the tenancy on the basis that the tenant is reasonably likely to be able to and undertakes to remedy

the breach within a reasonable period, if the Tribunal considers it appropriate and just to do so in the circumstances; or

- order that the tenancy terminate and the owner have possession of the premises but postpone the operation of these orders for up to 21 days on the basis of relative hardship, that is, that the tenant would suffer greater hardship if the Tribunal refused to postpone termination than the lessor would suffer if the Tribunal did postpone termination

Failure to pay rent

Clause 47 implements Recommendation 162.

Close relationship

Clause 48 implements the second point in Recommendation 150 - that the lessor should be able to terminate the tenancy if:

- a person (other than an immediate relative) who has a close family or personal relationship with the lessor and therefore a reasonable expectation that the lessor will assist the person to find accommodation intends to reside in the premises; and
- the lessor has obtained the approval of the Tribunal for termination on this ground at a hearing of which the tenant had adequate notice (four weeks)

Significant hardship

Clause 49 implements Recommendation 149 - that the lessor should be able to apply to the Tribunal for early termination of the tenancy on the basis that if the tenancy were to continue the lessor would suffer severe hardship. The Tribunal should terminate the lease after considering the hardship the lessor would suffer if the tenancy were to continue compared to the hardship the tenant would suffer if the tenancy were to terminate

Damage, injury or intention to damage or injure

Clause 50 implements Recommendation 152 - that the lessor should be able to apply to the Tribunal for an urgent hearing to terminate the tenancy where the premises are at serious risk of severe damage or the lessor has suffered or is likely to suffer injury to him or herself. The Tribunal should have a discretion to terminate the tenancy if satisfied that the tenant has intentionally or recklessly caused or permitted, or is likely intentionally or recklessly to cause or permit:

- serious damage to the residential premises; or
- injury to the lessor, the lessor's agent or any person in occupation of or permitted adjoining or adjacent premises.

False or misleading statements

Clause 51 allows the Tribunal to terminate a tenancy if the tenant used false or misleading statements to induce the lessor to agree to the tenancy.

Employer provided accommodation

Clause 52 implements the fifth point in Recommendation 150 - that the lessor should be able to terminate if the lessor granted the tenancy as part of a contract of employment between the lessor and tenant, the tenant ceases to be an employee of the lessor and the lessor requires the premises for the accommodation of another employee; four weeks notice required. Certain arrangements with a university are deemed to come within the ambit of this provision.

Purported assignment or subletting

Clause 53 implements the final point in Recommendation 154.

Sub-clause (1) implements the first sub-point - that the Tribunal should have a discretion to grant the termination application and require all the residents to vacate the premises.

Sub-clause (2) implements the last two sub-points - that the Tribunal should have a discretion to:

- refuse termination on the grounds that the new residents agree to vacate the premises (paragraph (a));
- order that the tenancy be terminated but postpone the time of termination for a limited period on the grounds of hardship to the tenant and allow the new residents to remain in occupation of the premises until the time of termination (paragraphs (b) and (c))

Repudiation without vacation

Clause 54 implements the third point in Recommendation 131 - that if the lessor and tenant agree to terminate the tenancy and the tenant fails to vacate the premises as agreed, the lessor should be able to apply to the Tribunal for termination and possession orders. If the Tribunal decides that the lessor and tenant did agree to terminate the tenancy, the Tribunal shall terminate the tenancy and order that the lessor have possession of the premises.

Compensation to lessor

Clause 55 implements Recommendation 163 - that the lessor should be able to obtain compensation for the tenant's failure to vacate the premises as required by an order of the Tribunal. The lessor should be able to claim compensation for:

- financial loss incurred as a direct result of being unable to take vacant possession of the premises from the date on which the Tribunal required the tenant to vacate the premises; and
- the cost to the lessor of any application to the Registrar or arising from other procedures to evict the tenant.

Retaliatory applications

Clause 56 implements Recommendation 160 - that the Tribunal should have the power to refuse an application for termination where it is satisfied that the lessor was motivated to a significant extent to terminate the tenancy because the tenant had taken any one or more of the following steps:

- the tenant had applied to the Tribunal for an order;
- the tenant had applied to a government authority to secure or enforce his or her rights as a tenant; or
- an order of the Tribunal was in force in relation to the lessor and the tenant.

In this situation, the onus of proof shall be on the lessor to show that the termination was not so motivated.

Division 5 - Defective termination notices

Lessor's defective notice where tenant vacates

Clause 57 together with the next two clauses this clause implements Recommendation 146.

This clause implements the parts of Recommendation 146 that deal with a lessor's defective notice where the tenant vacates - the Tribunal should have the discretion to waive a defect in the form or giving of a notice in writing to vacate provided it is satisfied the tenant was not (or would not be) disadvantaged by the error should the termination application proceed.

If the defective notice is not remedied by a Tribunal order, the notice to vacate should have no effect and the tenant should be able to claim compensation for wrongful eviction and seek an order allowing her or him to resume occupation of the premises.

Lessor's defective notice where tenant does not vacate

Clause 58 together with the previous clause and the next clause this clause implements Recommendation 146.

This clause implements the parts of Recommendation 146 that deal with a lessor's defective notice where the tenant does not vacate - the Tribunal should have the discretion to waive a defect in the form or giving of a notice in writing to vacate provided it is satisfied the tenant was not (or would not be) disadvantaged by the error should the termination application proceed.

Tenant's defective termination notice

Clause 59 together with the previous two clauses this clause implements Recommendation 146.

This clause implements the parts of Recommendation 146 that deal with a tenant's defective notice - the Tribunal should have the discretion to waive a defect in the form or giving of a notice of intention to vacate provided it is satisfied the lessor was not (or would not be) disadvantaged by the error should the termination application proceed.

If the defective notice is not remedied by a Tribunal order, the notice of intention to vacate should have no effect and the lessor should be able to claim compensation for the tenant's abandonment of the premises.

Division 6 - Abandonment of premises

Effect of abandonment

Clause 60 implements Recommendation 169 - that the tenancy agreement should terminate upon abandonment of the premises by the tenant. The tenant abandons the premises by permanently vacating the premises contrary to the tenancy agreement and without the agreement of the lessor.

Abandonment during fixed term

Clause 61 implements Recommendation 172 - that the lessor may claim compensation for loss of rent which the lessor would have received had the tenancy continued up to the expiry date of the fixed term. The maximum amount of compensation that the lessor may claim is the equivalent of 16 weeks rent.

This maximum limit should apply before any consideration of reduction of compensation because of the duty to mitigate. For example, if the Tribunal decides that the compensation should be reduced for failure to mitigate and there were 45 weeks remaining in the fixed term after the abandonment, the Tribunal shall apply the reduction as though there were 16 weeks rather than 45 weeks remaining. The maximum should not affect calculations of compensation or reduction for failure to mitigate, where the tenant abandons the premises with 16 or less weeks remaining in the tenancy.

After further consultation with stakeholders, the Committee recommended that limiting compensation to 16 weeks rent may well be inadequate if the fixed term of the tenancy was for much longer and recommended that 25 weeks rent would be more suitable.

This clause also implements Recommendation 173 - that the Tribunal should be able to order compensation for advertising costs and reletting costs of an amount up to the equivalent of 1 weeks rent, which the Tribunal considers appropriate in the circumstances. In deciding what amount of compensation is appropriate the Tribunal shall consider whether.

- the advertising costs and reletting costs are reasonable;
- the compensation should be reduced by reason of the timing of the abandonment given that the lessor is likely to incur these costs at the end of the fixed term in any event

Abandonment during periodic agreement

Clause 62 implements Recommendation 171 - that the lessor should be able to claim compensation for loss of rent due to abandonment of the premises during a periodic tenancy up to the equivalent of 3 weeks rent. The lessor should not be able to claim any compensation for reletting or advertising fees.

Division 7 - Miscellaneous

Successor in title to lessor

Clause 63 allows a person, other than the lessor, who would be entitled to possession of the premises but is prevented by section 34, to terminate the tenancy agreement by notifying the tenant within 2 months and giving the tenant at least 2 months to vacate the premises.

PART V - RENTAL RATE INCREASES

Waiver of notice requirements

Clause 64 implements Recommendation 70 - that a tenant who wishes to apply to the Tribunal to dispute a rent increase should give the lessor written notice of application to the Tribunal and make that application at least 14 days before the rent increase was to have taken effect according to the lessor's notice.

A tenant who wishes to vacate the premises as a result of the rent increase should give written notice of intention to vacate at least 14 days before the rent increase was to have taken effect.

If the tenant does not give either of the above notices to the lessor within the required period then the tenant should be deemed to have accepted the rent increase.

The tenant should be able to apply to the Tribunal for an extension of the above notice periods in special circumstances such as the tenant being on holidays at the time of the notice of the rent increase.

Freezing rents

Clause 65 implements Recommendation 71 - that an application to the Tribunal for a review of a rent increase should put the increase in abeyance until the Tribunal decides the application.

Orders

Clause 66 implements the first part of Recommendation 69 - that the Tribunal should have the following powers to deal with an application for review of a rent increase:

- reject the application and allow the increase;
- allow the increase;
- disallow the increase and order a new increase which the Tribunal considers is not excessive;
- disallow the increase and reaffirm the original rent.

Guidelines for orders

Clause 67 implements Recommendation 66 - that there should be a presumption a rent increase is not excessive unless it is substantially above the market rate of rent increases for rental properties in Canberra.

Sub-clause (2) implements the second part of Recommendation 66 - that a rental increase should be presumed to be excessive if it is 20% greater than the increase for the corresponding period in the ABS CPI for rents in Canberra (the ACT Government should make this ABS data available to the Tribunal and all tenancy organisations).

Sub-clause (2) also implements Recommendation 67 - that where there is a presumption that the increase is excessive, the onus should be on the lessor to prove the contrary to the satisfaction of the Tribunal. Correspondingly, where there is a presumption that the increase is not excessive, the onus shall be on the tenant to prove the contrary to the satisfaction of the Tribunal.

Sub-clause (3) implements Recommendation 68 - that the Tribunal should take into account the following factors when determining whether a rent increase is excessive.

- rate of rent prior to the rent increase;
- the amount of the rent increase immediately prior to the increase complained of;

- the time which has elapsed since the last rent increase;
- outgoings or costs of the lessor and services which the lessor provides;
- the value of fixtures and goods supplied by the lessor as part of the tenancy;
- the state of repair of the premises;
- rents paid for comparable premises;
- the value of any work performed or improvements carried out by the tenant with the lessor's consent; and
- any other matters the Tribunal considers relevant.

Effect of orders

Clause 68

Sub-clause (1) implements the second part of Recommendation 69 - that if the Tribunal allows the rent increase or substitutes a new rent increase for the one sought by the lessor, the rent increase should be backdated to the date at which the increase was to have taken effect in accordance with the notice of the lessor.

Sub-clause (3) implements the final point in the first part of Recommendation 69 - that if the Tribunal disallows a rent increase, it should be able to order repayment by the lessor to the tenant of rent paid as a result of the disallowed rent increase.

Further increases

Clause 69

implements the third part of Recommendation 69 - that after the Tribunal has reviewed a rent increase the lessor should not be able to increase the rent again for 12 months from the date the proposed increase was to have taken effect.

Reduction of existing rent

Clause 70

implements Recommendation 104 - that the Tribunal should be able to order a reduction in rent for loss of the use of or enjoyment of all or part of premises, facilities or services provided with the tenancy agreement on the basis of the following actions of the lessor:

- failure to make repairs as required by the proposed Act;
- withdrawal of facilities or services;

The reduction in rent should cease on the day that adequate repairs are made, facilities are restored, or such earlier date as the Tribunal considers appropriate. The Tribunal should be able to order a retrospective or prospective reduction in rent.

This clause also implements Recommendation 79 that the Tribunal should have power to order a reduction in the rent for interference by the lessor in the tenant's use and enjoyment of the premises. The Tribunal should be able to order a retrospective reduction in rent to continue until the cessation of interference. The Tribunal should be able to deem separate acts of interference as continuing interference by the lessor as it considers appropriate and order a reduction in rent accordingly.

PART VI - RESOLUTION OF RESIDENTIAL TENANCY DISPUTES

Division 1 - Action by Registrar

Assistance with inquiries

Clause 71 paragraph (c) implements the third point in Recommendation 115 that Tribunal staff should give detailed assistance with the completion of tenancy application forms.

Division 2 - Applications

Applications for resolution of dispute

Clause 72 provides for a party to a tenancy agreement to apply for resolution of the dispute.

Withdrawal of application

Clause 73 provides for an applicant who applied for resolution of a dispute to withdraw the application.

Action on receiving applications

Clause 74 implements Recommendation 112 - that lessors and tenants should continue to be able to make use of mediation services at no cost. The relevant authority should be able to refer any tenancy dispute to mediation. However, provision should be made for the referral of urgent matters in appropriate cases directly to the Tribunal, rather than to mediation.

This clause also implements the fourth and fifth points in Recommendation 115 - that:

- on receiving the application, the Registrar should list the matter for hearing and give notice to both parties of the hearing date and of the reasons for the claim; and

- if the application form contains insufficient information, the Registrar should contact the parties to obtain further information;

Sub-clause (4) implements Recommendation 166 - that the Tribunal should have a general discretion to refuse applications for termination of the tenancy in the circumstances of the application such that the Tribunal should be able to refuse termination on the grounds that the breach by the lessor has not occurred or in the circumstances it is trivial and not sufficient reason for termination.

After failed mediation

Clause 75 implements the second point in Recommendation 120 - that if the parties have already attended a mediation session prior to application to the Tribunal, the Registrar should take this into account when deciding whether to refer the parties to a preliminary conference.

Considerations for Registrar

Clause 76 requires the Registrar to have regard to facilitating dispute resolution within 28 days of application and allows the Registrar to refer a matter to mediation or a preliminary conference.

Referral to Tribunal

Clause 77 requires the Registrar to refer a dispute to the Tribunal if, after notifying the applicant that the application discloses no dispute, the applicant requests the Registrar to refer the matter to the Tribunal.

Division 3 - Mediators

Approved mediators

Clause 78 provides for the Minister to approve Mediators for the purposes of this Bill.

List of approved mediators

Clause 79 requires the Registrar to keep a list of Mediators and make it available to the public

Division 4 - Preliminary conferences

Non-attendance at preliminary conferences

Clause 80 implements the fourth point in Recommendation 120 - that if the applicant fails to attend the preliminary conference without reasonable excuse, the registrar or Tribunal should have a discretion to strike the application out.

Representation

Clause 81 extends the implementation of Recommendation 121 - that the parties should have an unrestricted right to be represented at the Tribunal hearing.

Taking evidence

Clause 82 allows the Registrar or a referee to take sworn evidence at a preliminary conference and gives the Registrar or a referee power to compel a person at the conference to give sworn evidence.

Agreement at preliminary conference

Clause 83 implements the eighth point in Recommendation 120 - that if the parties reach an agreement at the preliminary conference, the agreement should be registered and become enforceable within 2 days unless, in the interim, one of the parties notifies the Registrar that he or she wishes to withdraw from the agreement.

Non-agreement at preliminary conference

Clause 84 implements the ninth point in Recommendation 120 - that if the parties fail to reach an agreement at the preliminary conference, the Registrar should list the matter for a full Tribunal hearing, or, if the matter requires urgent resolution, should list the matter for hearing as a matter of priority

Referral of questions of law

Clause 85 extends the implementation of clause 126 - that the Tribunal should have a discretion to refer a question of law for a declaration to the Supreme Court if the Tribunal considers that the application involves issues of public importance.

Review of decisions of Referee

Clause 86 provides for the Tribunal to review the decisions of a referee.

Division 5 - Tribunal hearings

Parties

Clause 87 defines the parties to a Tribunal hearing as:

- the parties to the tenancy dispute;
- any person joined to the proceedings by the Tribunal; and
- the Director of the Consumer Affairs Bureau if she or he intervenes.

Intervention by Director

Clause 88 provides for the Director of the Consumer Affairs Bureau to intervene in proceedings if it would be in the public interest

Hearings

Clause 89 provides that Tribunal hearings must be in public unless there are exceptional circumstances that warrant a closed hearing.

Procedure in absence of party

Clause 90 provides procedures for a Tribunal hearing if one party does not appear.

Adjournment of proceedings

Clause 91 allows the Tribunal to adjourn the proceedings.

Record of proceedings

Clause 92 requires the Tribunal to keep a record of proceedings.

Inquiries

Clause 93 allows the Tribunal to make any inquiries it considers appropriate.

Representation

Clause 94 implements Recommendation 121 - that the parties should have an unrestricted right to be represented at the Tribunal hearing.

Witnesses

Clause 95 gives the Tribunal power to summon a person to appear or produce a document or both and provides procedures relating to the summons.

The penalty for failure to comply with a summons is 50 penalty units or imprisonment for 6 months or both if the offender is a natural person, or 250 penalty units if the offender is a body corporate.

Taking evidence

Clause 96 allows the Tribunal to take sworn evidence at a hearing and gives the Tribunal power to compel a person before the Tribunal to give sworn evidence.

Self-Incrimination

Clause 97 provides that self-incrimination will not be sufficient to excuse a person from giving evidence to the Tribunal.

Assistance to parties

Clause 98 implements the third point in Recommendation 123 - that the adjudicator should be required to actively assist the parties who appear at the hearing.

Amendments

Clause 99 provides for amendments to documents during a hearing.

Costs

Clause 100 implements the first part of Recommendation 122 - that the Tribunal should have no power to award costs except in exceptional circumstances.

Renewed hearings

Clause 101 allows for a hearing to be renewed if an order of the Tribunal is breached.

Division 6 - Procedural powers and orders of the Tribunal

Procedural powers of the Tribunal

Clause 102 Paragraph (a) implements Recommendation 166 - that the Tribunal should have a general discretion to refuse applications for termination of the tenancy in the circumstances of the application such that the Tribunal should be able to refuse termination on the grounds that the breach by the lessor has not occurred or in the circumstances it is trivial and not sufficient reason for termination.

Paragraph (b) implements the second point in Recommendation 122 - that the Tribunal should have no power to award costs except in exceptional circumstances as a result of one party causing unreasonable delay or unreasonable expense. If the Tribunal is satisfied of these exceptional circumstances it should be able to order the person who brought the proceedings to pay to the defendant the costs the defendant incurred in relation to the proceedings.

Paragraph (e) implements the eleventh point in Recommendation 114 - that The Tribunal should have the power to make orders to vary, set aside, stay or suspend the operation of, any order made.

Interim orders

Clause 103 together with clause 104, this clause implements the first part of Recommendation 114 - that the Tribunal should have power to make interim orders.

Orders

Clause 104 together with clause 103, this clause implements the first part of Recommendation 114 - that the Tribunal should have the power to make orders to:

- grant an application made to the Tribunal under the new residential tenancies legislation (paragraph (a));
- restrain any action in breach of the residential tenancy agreement (paragraph (b));
- require performance of the tenancy agreement (paragraph (c));
- require the payment of an amount of money (paragraph (d));
- require work to be done or other such steps necessary to remedy a breach of the residential tenancy agreement (paragraph (e));

- require compensation, including compensation for loss of rent or compensation for any other breach of the residential tenancy agreement (paragraph (f));
- require payment of part or all of the rent under the residential tenancy agreement into the Tribunal until the lessor has complied with the tenancy agreement or an application for compensation has been determined (paragraph (h));
- require payment (out of rent paid into the Tribunal) towards the cost of remedying a breach of the residential tenancy agreement by the lessor or towards compensation (paragraph (j));
- terminate the tenancy and grant possession of the premises to the lessor in accordance with the Act (paragraph (m));
- vary, set aside, stay or suspend the operation of, any order made (paragraph (n)).

Paragraph (g) provides a corresponding provision to paragraph (m) by allowing the Tribunal to restore a tenancy agreement and grant the tenant possession of the premises.

Notice of Orders

Clause 105 requires the Tribunal to notify each party to the dispute, in writing, within 14 days of orders made by the Tribunal.

Statement of reasons

Clause 106 implements the first point in Recommendation 125 - that the Tribunal should produce written reasons for a decision when requested to do so by one of the parties within 14 days of the making of the decision,

Division 7 - Enforcement

Failure to comply

Clause 107 implements 1 of the 3 offences in Recommendation 175 - that it is an offence to fail to comply with an order of the Tribunal (other than an order for payment of money) without reasonable excuse where;

- the person failed to comply with a Tribunal order on one or more previous occasion(s) in the 12 months preceding the act of non compliance; and
- the previous occasion(s) of non compliance have been the subject of a Tribunal order for civil penalty

Orders for payment of money

Clause 108 implements a part of Recommendation 176 - that if the Tribunal imposes a civil penalty, the registrar or the aggrieved party should then be able to seek payment of the civil penalty through the Magistrates Court as though it were a civil judgement debt of that Court.

PART VII - RESIDENTIAL TENANCIES TRIBUNAL

Division 1 - Jurisdiction

Residential Tenancies Tribunal

Clause 109 implements the second of the two options proposed in Recommendation 128 - that the government give detailed consideration to two models for the Tribunal:

1. the establishment of a tenancy office which combines the residential tenancy Tribunal with the function of bonds administration and possibly also enforcement of the Act and tenancy education services; or
2. the establishment of a specialist residential tenancy Tribunal within the administration of the ACT Magistrates Court.

Jurisdiction

Clause 110 provides that the Tribunal should not have the power to make an order for:

- the payment of an amount that exceeds \$5,000; or
- the performance of work or the taking of steps the cost of which may or will exceed \$5,000.

Division 2 - Referees

Referees

Clause 111 implements the last point in recommendation 120 - that the [person] who convenes the preliminary conference should be a qualified legal practitioner and have extensive training in tenancy matters and mediation.

Division 3 - Registrar and Deputy Registrars

Functions and powers

Clause 112 provides further functions and powers of the Registrar.

Chairperson's involvement

Clause 113 requires the Registrar to work with and under the direction of the Chairperson of the Tribunal.

Deputy Registrars

Clause 114 provides for Deputy Registrars of the Tribunal.

Division 4 - Other matters about the Tribunal

Procedure generally

Clause 115 provides that, if no procedure is specified, the Tribunal can determine its own procedure.

Informality of procedures

Clause 116 implements Recommendation 113 - that the Tribunal should be a low cost, informal forum for the quick resolution of disputes in which people appear in the main without representation. The procedures of the Tribunal should operate with a minimal level of formality and ensure that disputes are resolved in a fair and consistent manner

Contempt in the face of the Tribunal

Clause 117 implements the second point in Recommendation 175 - that serious misbehaviour at or disturbance of Tribunal proceedings should be an offence.

The penalty is 50 penalty units or imprisonment for 6 months or both if the offender is a natural person, or 250 penalty units if the offender is a body corporate

Protection of members etc

Clause 118 indemnifies the listed people from criminal or civil proceedings in relation to matters if they have acted in good faith under the Bill.

PART VIII - REFERRALS AND APPEALS TO SUPREME COURT

Referral of questions of law

Clause 119 implements the second part of Recommendation 126 - that the Tribunal should have the discretion to refer a question of law for a declaration to the Supreme Court if the Tribunal considers the application involves issues of public importance.

Referral of applications

Clause 120 extends the implementation of the second part of Recommendation 126 by allowing the Tribunal to refer an application to the Supreme Court if the Tribunal considers the application involves issues of public importance.

Appeal from decisions of the Tribunal

Clause 121 implements the first part of Recommendation 126 - that there should be a right of appeal to the Supreme Court of the ACT on issues of law and natural justice.

PART IX - MISCELLANEOUS

Death of 1 of several tenants

Clause 122 implements the first point in Recommendation 138 - that if a co-tenant dies then the tenancy shall continue with the surviving co-tenant(s) as the sole tenants. This shall apply whether the co-tenants were joint tenants or tenants-in-common before the death.

Purported assignment or subletting

Clause 123 implements Recommendation 153 - that assignment or subletting of the premises without the consent of the lessor should be prohibited. An assignment or subletting by the tenant should not be effective in law unless the lessor consents to the arrangements either before or after they are made.

Admissibility of evidence

Clause 124 provides that evidence given at mediation, preliminary conferences or before the Tribunal is not admissible in criminal proceedings.

False information

Clause 125 implements the third point in Recommendation 175 - that to knowingly provide information in any notice or document required under the proposed Residential Tenancies Act that is false or misleading in any material particular is an offence.

The penalty is 50 penalty units or imprisonment for 6 months or both if the offender is a natural person, or 250 penalty units if the offender is a body corporate.

Proceedings by infants

Clause 126 implements Recommendation 35 - that people under the age of 18 years should be able to enter a binding tenancy agreement.

Enforcing agreements by or against children

Clause 127 implements Recommendation 35 - that people under the age of 18 years should be able to enter into a binding tenancy agreement.

Compliance with approved forms

Clause 128 mirrors section 13 of the Interpretation Act 1967.

Determined fees

Clause 129 deals with Recommendation 116 - that there should be no fees for application to the Tribunal. If this recommendation is rejected by Government, there should be an automatic waiver of fees for specified categories of low-income-earners and the Registrar should have a discretion to waive the application fee in whole or in part on the grounds of hardship. The application fee should be fully refundable if the application is substantially successful at the preliminary conference or at the full hearing.

It is intended that no fees will be determined.

Regulations

Clause 130 provides for the Executive to make regulations under the Bill.

SCHEDULE

Sub-section 3 (1) definition of "prescribed terms" and this Schedule implements, in part, Recommendation 22 - that the prescribed terms should be a schedule to the new Act.

PRESCRIBED TERMS FOR RESIDENTIAL TENANCY AGREEMENT

The lessor and tenant must comply with the terms of the Tenancy Agreement

- Clause 1 implements Recommendation 16 - that the prescribed terms should apply in every tenancy agreement, whether agreed to by the parties, or not.
- Clause 2 indicates that the signature of the parties is evidence of their agreement to the terms of the tenancy agreement.
- Clause 3 implements Recommendation 17 in a refined form. People may add to the prescribed terms to suit their individual needs but can only add terms that are inconsistent with the prescribed terms if the parties have had independent legal advice.
- Clause 4 Defines fixed term and periodic tenancies.

Costs and procedures for establishing a Tenancy Agreement

- Clause 5 implements Recommendation 28 - that the lessor be required to pay for the cost of preparation and execution of the tenancy agreement.
- Clause 6 provides that the tenant is responsible for any legal costs he or she incurs in relation to preparation and execution of the Tenancy Agreement.

Clause 7 implements Recommendation 24 - that the lessor should be required to use, and provide to the tenant for signature, a tenancy agreement which is in the same or substantially the same form as the prescribed terms and any valid additional terms.

Clause 8 requires the tenant and the lessor (or agents) to sign the tenancy agreement.

Clause 9 implements Recommendation 29 - that the lessor should be required to provide the tenant with a copy of the fully executed tenancy agreement within three weeks of the time that the tenant signs and forwards the unexecuted agreement to the lessor for signature, or as soon as reasonably practicable thereafter.

Clause 10 provides that if the lessor fails to return the Tenancy Agreement to the tenant that the Tenancy Agreement is still effective in the terms signed by the tenant and commencing when the tenant occupies the premises or the lessor accepts rent.

Information

Clause 11 implements Recommendation 31 - that the Standard Information Booklet should be drafted by the Consumer Affairs Bureau in consultation with other Government and private agencies.

this clause also implements Recommendations 33 - that the lessor should be required to provide the tenant with a copy of the Information Booklet at or before the commencement of the tenancy, and Recommendation 34 - that the lessor should be required to provide the tenant with a copy of the body corporate rules or by-laws at or before commencement of a tenancy which is managed by a corporation under the Unit Titles Act 1970.

Bond and Condition Report

Maximum bond

- Clause 12 indicates that a bond is not compulsory unless required by the lessor.
- Clause 13 implements Recommendation 44 - that only one bond may be required in relation to a tenancy agreement.
- Clause 14 implements Recommendation 45 - that lessors should be prohibited from taking of a bond which is more than the equivalent of four weeks rent.

Lodgement of the bond with the Office of Rental Bonds

- Clause 15 requires the bond to be lodged with the Office of Rental Bonds.
- Clause 16 implements the first part of Recommendation 49 - that the proposed Residential Tenancies Act should recognise and provide for lodgement of the bond by the tenant or the lessor.

If the lessor and tenant agree that the tenant is to lodge the bond

- Clause 17 implements, in part, Recommendation 49:
- where the tenant is to lodge the bond, the tenant shall not be entitled to possession of the premises until the lessor receives evidence of lodgement of the bond with the proposed Tenancy Office (Bond Office) unless the lessor otherwise agrees;
 - an original receipt from the Tenancy office shall constitute evidence of lodgement by the tenant;

If the lessor is to lodge the bond

- Clause 18 implements the last point in Recommendation 49 - that where the lessor receives the bond money from the tenant, the current rules and procedures shall apply to the lessor.

Condition Report

- Clause 19 requires the lessor to, within 1 day of the tenant taking possession of the premises, give 3 copies of a Condition Report to the tenant. The Condition Report must conform with the Condition Report form published by the Australian Capital Territory Government.
- Clause 20 requires the tenant to examine the Report and indicate agreement or disagreement with it. The tenant must return to the lessor 2 copies of the Report plus comments if any within 7 working days of receiving it.
- Clause 21 requires the lessor to keep a record of receipt and lodgement of the condition report.

Rent and other charges

Rent and bond only as payment for the tenancy

- Clause 22 implements the first part of Recommendation 36 - that the lessor should be prohibited from charging a tenant or prospective tenant fees (other than rent or bond) or requiring any other benefit (such as the purchase of goods) for, or in association with:
- the granting, extension, transfer or renewal of a tenancy or subtenancy;
 - vacating of premises;
 - obtaining a key to the premises;
 - information on the availability of tenancies.

Holding deposits

- Clause 23 deals with Recommendation 37. The committee initially recommended that holding deposits be prohibited in all but the very limited circumstances they specified. The Committee considered further representations from the stakeholders regarding this recommendation and agreed to prohibit holding deposits absolutely.

Payment of rent

Clause 24 requires the tenant to pay the rent on time and prohibits the tenant from using the bond money to pay the rent for the last weeks of the tenancy.

Clause 25 implements Recommendation 54 - that there should be a prohibition on the payment of rent by postdated cheque.

Maximum rent in advance

Clause 26 implements Recommendation 53 - that the amount of rent in advance that the tenant may be required to pay should be restricted to the equivalent of four weeks rent.

Rent receipts

Clause 27 implements the second point in Recommendation 57 - that the lessor or agent should be required to issue a receipt immediately where the rent or bond is paid in person.

Clause 28 implements the third point in Recommendation 57 - that where rent is not paid in person, the lessor or agent be required to issue and dispatch a receipt to the tenant within seven working days of receiving the payment of rent or bond.

Clause 29 implements the fourth point in Recommendation 57 - that the receipt should specify:

- the date of payment;
- the amount paid;
- the period in respect of which the payment is made;
- the premises in respect of which payment is made; and
- whether payment is of bond money or rent.

Clause 30 implements the first point in Recommendation 57 - that the lessor or agent be required to provide a receipt for payment of rent or bond to the tenant except where the rent is paid by direct deposit into a bank account nominated by the lessor or agent.

Rent records

Clause 31 implements the first point in recommendation 56 - that the lessor should be required to keep records of rent and bond payments.

Increase in rent

Clause 32 prohibits variation of the rent from period to period except as provided by this Tenancy Agreement and the Residential Tenancies Act.

Clause 33 implements Recommendation 60 - that the frequency of rent increases should be restricted to one increase per year whether the tenancy is fixed term or periodic.

Clause 34 implements Recommendation 61 - that the 12 month restriction should continue to apply to particular rented premises provided that the identity of one or more of the tenants of the premises remains the same as at the time of the last rent increase.

Review of excessive rent increases

Clause 35 implements Recommendation 62 - that the lessor should be required to give the tenant 8 weeks notice in writing of a rent increase.

Clause 36 implements Recommendation 65 - that a tenant should have the right to apply to the Tribunal for review of rent increases

Clause 64 of the Bill describes what will be considered an "excessive" rent increase.

This clause also implements the first point of Recommendation 70 - that a tenant who wishes to apply to the Tribunal to dispute the increase should give the lessor written notice of application to the Tribunal and make that application at least 14 days before the rent increase was to have taken effect according to the lessor's notice.

The clause also implements Recommendation 71 - that an application to the Tribunal for a review of a rent increase should put the increase in rent in abeyance until the Tribunal decides the application.

Clause 37 implements the third point in Recommendation 70 - that if the tenant does not give notice to the lessor within the required period then the tenant should be deemed to have accepted the rent increase.

Clause 38 implements the second point in Recommendation 70 - that a tenant who wishes to vacate the premises as a result of a rent increase should give written notice of intention to vacate at least 14 days before the rent increase was to have taken effect.

Lessor's costs

Clause 39 the first paragraph implements part of Recommendation 38 - that the lessor should pay for all fixed costs and government charges including land tax and property rates.

The third paragraph implements Recommendation 41 - that the tenant should not be liable for the supply of water, electricity or gas unless the premises have a separate meter for measuring usage. If the tenant shares a supply with the lessor or neighbouring premises, the lessor should be liable for the supply.

The fourth paragraph implements the second point in Recommendation 40 - that if the lessor fails to read the meter at the commencement of the tenancy, the tenant shall not be liable for consumption of water until after the meter is first read after commencement of the tenancy.

Clause 40 implements part of the third point in Recommendation 38 - that if the lessor arranges for the physical installation of a supply or service such as electricity, gas or telephone (whether required under the proposed Act or for other reasons), the lessor should pay for such installation.

This clause also implements the second point in Recommendation 38 - that the tenant should be responsible for the establishment cost of a new account for the supply of such services in the name of the tenant and the fee for reconnection of these services should they be disconnected as a result of failure of the tenant to pay for the services or other fault of the tenant.

Clause 41 implements the second part of Recommendation 39 - that the lessor should pay for the annual administrative fee for the supply of water which is not related to the amount of water consumed.

This has been extended to include the supply charges associated with the supply of sewerage.

Clause 42 This clause does not specifically implement a recommendation of the Committee however, it is consistent with the last part of Recommendation 38 - that the lessor should pay for all fixed costs and government charges including land tax and property rates.

Tenant's costs

Clause 43 implements the first point in Recommendation 38 - that the prescribed terms should require the tenant to pay for consumption of water, electricity, gas, telephone services, fuel and other such supplies used and the first part of Recommendation 39 - that the tenant should be required to pay for the cost of water consumed by the tenant.

Clause 44 Prohibits the lessor from requiring a tenant to connect or continue a telephone service.

Reading of metered services

- Clause 45 implements Recommendation 40 - that the lessor should be required to read or arrange for the reading of the meter at the commencement of the tenancy and on termination. The lessor should give the tenant an opportunity to verify the reading of the meter.
- Clause 46 implements the third point in Recommendation 40 - that if the lessor fails to read the meter on the termination of the tenancy the tenant shall not be liable for consumption of water after the last reading of the meter prior to termination.
- Clause 47 implements the fourth point in Recommendation 40 - that if the tenant does not inform the lessor of the date on which the tenant is to vacate the premises, then the lessor shall read the meter on becoming aware that the tenant has vacated the premises. The tenant shall then be liable for consumption of water up to the time of this reading. In case of dispute, the proposed Act shall deem the lessor to become aware of the date of vacating the premises at the time that a reasonable person would have become aware of the date in the circumstances.

Tenant's use of the premises without interference

- Clause 48 implements the first part of Recommendation 136 - that the lessor should be required to guarantee the tenant that there is no legal impediment, of which the lessor had or ought reasonably to have had knowledge at the time of entering into the tenancy agreement, to the tenant occupying the premises as a resident for the duration of the tenancy.
- Clause 49 implements the first part of Recommendation 78 - that the lessor should not cause or permit any interference with the reasonable peace, comfort or privacy of the tenant in the use by the tenant of the premises.

This clause also implements the second part of Recommendation 136 - that the tenant should have quiet enjoyment of the premises without interruption by the lessor or any person claiming by, through or under the lessor or having superior title to that of the lessor.

Clause 50 provides that, unless otherwise agreed in writing, the tenant shall have exclusive possession of the premises for the duration of the tenancy.

Lessor to make repairs

Lessor to provide premises in a reasonable state at the start of the tenancy

Clause 51 The second paragraph implements Recommendation 92 - that the lessor should be required to provide the premises in a reasonable state of repair.

The fourth paragraph implements the first point in Recommendation 97 - that the lessor should be required to provide and maintain such locks or other security devices as are necessary to ensure that the residential premises are reasonably secure.

The second part of this clause implements the final two points in Recommendation 97 - that the lessor and the tenant should be prohibited from changing the locks except with the consent of the other party which consent must not be unreasonably withheld. This prohibition should not apply in cases of emergency or if waived by the Tribunal on application, and that if the locks are changed a copy of the key to the changed locks must be given to the other party concerned unless the Tribunal approves otherwise.

Lessor to make repairs

Clause 52 implements Recommendation 94 - that the lessor should be required to maintain the premises in a reasonable state of repair, and Recommendation 95 - that the lessor should not be responsible for a failure to make repairs if the tenant failed to notify the lessor of the need for repairs and it is not reasonable to expect the lessor to otherwise be aware of the need for repairs.

Clause 53 implements Recommendation 96 - that the lessor should not be required to make repairs due to the negligence or wilful damage of the tenant but should require repairs arising from fair wear and tear.

Clause 54 implements Recommendation 98 - that the lessor should be required to make repairs within four weeks of notification of the need for repairs.

Repairs in Unit Title premises

Clause 55 implements the first part of Recommendation 105 - that if the residential premises are subject to the Unit Titles Act 1970, the lessor should take all possible steps to require the body corporate to make repairs to common areas as soon as possible in accordance with its responsibilities under the Unit Titles Act, where the repairs are necessary to ensure that the tenant has full use and enjoyment of the premises.

Urgent repairs

Clause 56 implements Recommendation 99 - that the lessor should be required to make urgent repairs within a reasonable period of notification of the need for urgent repairs.

Clause 57 implements Recommendation 100 - that urgent repairs should be specifically defined in the proposed Act as including any one or more of the following:

- burst water service;
- blocked or broken lavatory system;
- serious roof leak;
- gas leak;
- dangerous electrical fault;
- flooding or serious flood damage;
- serious storm or fire damage;

- failure of gas, electricity or water supply to the premises;
- failure of refrigerator where supplied with the premises;
- failure or breakdown of any essential service on the premises for hot water, cooking, heating or laundering;
- any fault or damage that causes the residential premises to be unsafe or insecure;
- any fault or damage likely to cause injury to person or property or undue inconvenience to the tenant;
- a serious fault in any staircase, lift or other common area which inhibits or unduly inconveniences the tenant in gaining access and for use of the premises.

Tenant may authorise urgent repairs in certain circumstances

Clause 58 deals with the second point in recommendation 102 - that if the lessor cannot be contacted or if the lessor fails to make repairs within a reasonable time, the tenant should arrange for repairs to a maximum value of \$1 000.

After further consultation with the stakeholders, the Committee recommended "\$1 000" be replaced with "a maximum of 5% of the annual rent for the premises".

Clause 59 The first paragraph implements the third dot point in Recommendation 102 - that the repairs arranged by the tenant must be made by a qualified trades person nominated by the lessor or agent.

The second paragraph implements the fourth dot point in Recommendation 102 - that if the lessor or agent has not nominated a tradesperson or the nominated tradesperson can not be contacted or is otherwise unavailable, then the repairs must be performed by a qualified tradesperson of the tenants choosing.

The third paragraph implements the fifth point in Recommendation 102 - that the tenant should be able to recover the cost of repairs from the lessor where the repairs are arranged by the tenant, and the sixth dot point in Recommendation 102 - that the tradesperson may invoice the lessor direct or if the invoice is issued to the tenant, the tenant may either give the invoice to the lessor requiring the lessor to pay or pay the Bill and send the receipt to the lessor seeking reimbursement.

Tenant to look after the premises

The tenant shall take reasonable care of the premises and keep the premises reasonably clean

Clause 60 implements the first three points in Recommendation 106 - that the tenant should be required to:

- not intentionally or negligently cause or permit any damage to the premises;
- as soon as practicable, notify the lessor of any damage to the premises; and
- maintain the premises in a reasonable state of cleanliness having regard to the condition of the premises at the commencement of the tenancy and the normal incidence of living;

Clause 61 implements the third and fourth points in Recommendation 106 - that the tenant should be required to:

- maintain the premises in a reasonable state of cleanliness having regard to the condition of the premises at the commencement of the tenancy and the normal incidence of living; and
- at the termination of the tenancy to leave the residential premises as nearly as possible in the same condition, fair wear and tear excepted, as at the commencement of the tenancy agreement as evidenced in the condition report.

Clause 62 implemented by Recommendation 109 - that the lessor should be prohibited from requiring the tenant to effect any improvements, alterations or repairs at the tenant's own expense. This recommendation does not apply to repairs necessary due to negligent or intentional damage by the tenant or person for whom the tenant is responsible.

Tenant to observe rules of body corporate

Clause 63 implements Recommendation 111 - that as a matter of principle, the tenant should comply with the by-laws of the body corporate in so far as they are applicable to the tenant and do not conflict with the division of duties between lessor and tenant as recommended in this report.

Tenant shall make no alterations and shall not add any fixtures or fittings without the consent of the lessor

Clause 64 implements the part of Recommendation 108 - proposed that the tenant should be prohibited from ... making alterations to the premises without the consent of the lessor.

There is however, no scope for the tenant to apply to the Tribunal to over-ride the lessor's decision. This clause is different from clause 65 because additions and alterations are much more substantial matters than fixtures and fittings.

Clause 65 implements the first and second parts of Recommendation 108 - that the tenant should be prohibited from adding any fixtures or fittings ... to the premises without the consent of the lessor. The agreement should also provide that such consent shall not be unreasonably withheld.

This clause is different from clause 64 because additions and alterations are much more substantial matters than fixtures and fittings.

Tenant shall not use the premises for illegal purposes and shall not disturb the neighbours

Clause 66 prohibits the tenant from using the premises for anything other than residential purposes, unless otherwise agreed in writing.

Clause 67 implements Recommendation 110 - that the tenant should be prohibited from:

- using or permitting the premises to be used for an illegal purpose to the detriment of the lessor's interest in the premises;
- causing or permitting a nuisance; or
- interfering, or permitting interference, with the use and enjoyment of premises by the occupiers of nearby premises.

Conducting an illegal activity on the premises that does not cause detriment to the lessor's interest in the premises will not be sufficient to breach this term.

Clause 68 implements Recommendation 107 - that the tenant should be prohibited from leaving the premises vacant for more than 21 days unless the tenant has notified the lessor of this intention.

Tenant shall not sell, dispose of, or sublet the tenancy without the consent of the lessor

Clause 69 implements Recommendation 153 - that the tenant should be prohibited from assigning or sub-letting the premises without the consent of the lessor. An assignment or subletting by the tenant should not be effective in law unless the lessor consents to the arrangements either before or after they are made. Consent may be evidenced either in writing or implied by the actions of the lessor.

After further consultation with stakeholders, the Committee recommended that the only acceptable evidence of consent by the lessor should be consent in writing. This should reduce the number of disputes arising regarding consent.

Tenant may be responsible for damage or other breach of the agreement by visitors or guests

Clause 70 implements the first two points of Recommendation 77 - that the tenant should be responsible for breaches of the tenancy agreement caused by third parties while they are on the premises provided that:

- the action or omission would, if performed by the tenant, have constituted a breach of this Tenancy Agreement; and
- the person is on the premises with the permission of the tenant

Clause 71 implements the last four points of Recommendation 77 - that the tenant should be responsible for breaches of the tenancy agreement caused by third parties while they are on the premises provided that:

- the third party is not the lessor or agent of the lessor;
- the third party is not on the premises at the request of the lessor;
- the third party is not on the premises to assist the lessor (whether at the request of the lessor or the tenant) perform any of the duties of the lessor under the prescribed terms; and
- the third party does not have a right to enter the premises without the consent of the tenant.

Lessor's access to the premises

Lessor cannot enter the premises except as provided in this Tenancy Agreement

Clause 72 implements the second part of Recommendation 78 - the prescribed terms should specifically provide that the lessor shall not have access to the premises except in accordance with the tenancy agreement and the proposed Act.

This clause also implements Recommendation 84 - that the tenant should be required to allow access required by law

This clause also implements Recommendation 80 - that there should be established rights of access for the lessor. The tenant should also be allowed to consent to access on any particular occasion.

This clause also implements Recommendation 91 - that where access is sought by the agent of the lessor the agent should be required to produce written identification on request.

Clause 73 implements Recommendation 90 - that access should be prohibited for all purposes on Sundays, public holidays, before 8.00 am and after 6.00 pm unless otherwise agreed or access is reasonably necessary in cases of urgent repairs

Access in accordance with the Tenancy Agreement

Routine inspections

Clause 74 implements Recommendation 81 - that there should be no more than 2 routine inspections per year. The routine inspections need not be equidistant.

Clause 75 implements Recommendation 82 - that the lessor should have access to:

- make an initial inspection of the premises within 4 weeks of the commencement of the tenancy; and
- inspect the premises upon vacation of the premises by the tenant,

and that such access be in addition to access for routine inspections.

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- inspect the premises upon vacation of the premises by the tenant,

and that such access be in addition to access for routine inspections.

Clause 76 deals with Recommendation 87 - that the lessor should be required to give the tenant 14 days notice in writing of routine inspections unless otherwise agreed.

After further consultation with stakeholders, the Committee recommended that 7 days notice is more suitable because if notice is given too far ahead, people forget when the inspection is happening.

This clause also implements Recommendation 88 - that there should be an opportunity for the tenant to negotiate a reasonable time for the routine inspection to take place. If the demands of the tenant are unreasonable, then the lessor should be able to apply to the Tribunal for an order requiring the inspection to take place at an appropriate time. In making its decision, the Tribunal should have regard to the work requirements of the lessor/agency and the working hours and other needs of the tenant.

Access for purchasers and new tenants

Clause 77 deals with Recommendation 85 - that the tenant should be required to allow access on a reasonable number of occasions during the period of 14 days preceding the end of the tenancy for the purpose of showing the premises to new tenants provided the tenant has at least 24 hours notice on each occasion.

After further consultation with stakeholders "14 days" was extended to "21 days" to allow more time for prospective tenants to view the premises.

Clause 78 implements Recommendation 86 - that in cases of sale of the premises during the tenancy, the proposed Act should require the tenant to allow access for each proposed sale on a reasonable number of occasions for the purpose of showing the premises to purchasers or mortgagees provided:

- the tenant has at least 24 hours notice on each occasion;
- there is a bona fide intention to sell;
- the lessor has notified the tenant of intention to sell in writing.

Access for repairs

Clause 79 implements Recommendation 83 - that the lessor should have access at a time(s) and for a period(s) which are reasonably necessary to make repairs.

This clause also deals with Recommendation 89 - that the lessor should be required to give 14 days notice in writing of access to make repairs unless otherwise agreed. The lessor should also be required to give notice of access appropriate to the circumstances in cases of urgent repairs.

After further consultation with stakeholders, "14 days" was reduced to "7 days" to speed up the repairs process.

Termination of the Tenancy Agreement - general principles

Clause 80 summarises the ways in which the tenancy agreement can be terminated under the Bill.

Prohibition on eviction without Tribunal order

Clause 81 implements the first part of Recommendation 130 - that the lessor should be prohibited from evicting a tenant without first gaining a Tribunal order for termination of the tenancy and possession.

Notice to vacate by the lessor

Clause 82 implements Recommendation 139 in relation to lessors - that the notice to vacate should be in writing and require the lessor or the real estate agent of the lessor nominated in the tenancy agreement to sign the notice to vacate.

The clause also implements Recommendation 140 in relation to lessors - that the notice to vacate should contain the following written information:

- if a ground is required under the proposed Act, the ground(s) on which the notice is served and the circumstances giving rise to the ground(s);
- the address of the premises subject to the notice;
- the lessor requires the tenant to vacate the premises by date [x] which date falls after the expiry of the required notice period and that the tenancy shall terminate on the day that the tenant vacates the premises.

Notice of intention to vacate by the tenant

Clause 83 the first part of this clause implements the final point in Recommendation 141 - that in the case of a notice of intention to vacate, the tenancy shall terminate on the date nominated in the notice as the date on which the tenant intends to vacate the premises.

Clause 84 implements Recommendation 139 in relation to tenants - that the notice of intention to vacate should be in writing and the tenant should be required to sign the notice of intention to vacate.

The clause also implements Recommendation 140 in relation to tenants - that the notice of intention to vacate should contain the following written information:

- if a ground is required under the proposed Act, the ground(s) on which the notice is served and the circumstances giving rise to the ground(s);
- the address of the premises subject to the notice;
- the tenant intends to vacate the premises on date [x] which date falls after the expiry of the required notice period and the tenancy shall terminate on that day.

Termination where the premises are not fit for habitation

Clause 85 together with clause 86, this clause implements Recommendation 137 - that if, other than as a result of a breach of a residential tenancy agreement:

- the premises are destroyed;
- rendered uninhabitable;
- cease to be lawfully useable as a residence;
- are compulsorily appropriated; or
- acquired by any proper authority,

the tenancy may be terminated.

Clause 86 together with clause 85, this clause implements Recommendation 137 - that if the tenancy is terminated the following should apply:

- the rent shall abate accordingly;
- the tenant may give notice of termination of the agreement which notice must be not less than two days;

- the lessor may give notice of termination of the agreement which notice must be not less than seven days;
- if neither the tenant nor the lessor gives notice then the rent shall abate as above and only resume if and when the premises become habitable again.

Termination of the tenancy by the tenant

Termination on or after the end of the fixed term

Clause 87 implements the second point in Recommendation 165 - that the tenant should be able to terminate a periodic tenancy on any grounds by giving the lessor three weeks written notice of intention to vacate. The notice of intention to vacate should be substantially in the standard form and state that the tenant intends to vacate the premises on the date specified in the notice. The tenancy agreement should then come to an end on that day. The common law rules as to the method and timing of notice for termination of periodic tenancies should not apply.

Clause 88 implements the first point in Recommendation 165 - that the tenant should be able to terminate a fixed term tenancy agreement on any grounds, on the day the fixed term expires, by giving the lessor a minimum of three weeks written notice of intention to vacate. The notice of intention to vacate should be substantially in the standard form and state that the tenant intends to vacate the premises on the day the fixed term expires. The tenancy agreement should then come to an end on that day.

Termination for breach by the lessor

Clause 89 provides the tenant with 2 options for termination of the agreement if the lessor breaches the tenancy agreement:

- application to the Tribunal for an order terminating the tenancy; or
- giving the lessor a written notice of intention to terminate the tenancy.

Clause 90 applies the procedures in Recommendation 167 if the tenant proceeds by way of notice of intention to terminate (two options are provided by clause 89):

- if the breach is capable of remedy, the tenant should give the lessor 14 days written notice of opportunity to remedy;

- if the lessor fails to remedy the breach within the 14 day notice period or the breach is incapable of remedy, then the tenant may give the lessor 14 days notice of intention to vacate;
- the tenancy agreement comes to an end on the day the tenant vacates the premises in accordance with the notice of intention to vacate; the tenant owes rent only up to and including the day that the tenant vacates the premises;
- if the lessor remedies the breach after the opportunity to remedy period but during the notice of intention to vacate period the tenant may at his or her option still bring the tenancy to an end by vacating the premises on the nominated date.

Significant hardship

Clause 91 implements Recommendation 164 - that the tenant should be able to apply to the Tribunal for early termination on the grounds of hardship.

The term "significant" has been used to qualify "hardship" to ensure that termination is only available in serious circumstances.

Termination of the tenancy by the lessor

Termination for failure to pay rent

Clause 92 implements Recommendation 155 - that:

- the lessor can seek termination of a tenancy for non payment of rent only on the basis that an amount of rent is owing and has not been paid for 7 clear calendar days. In this calculation the first day expires at midnight on the day on which the rent was due and not paid;
- the lessor may then serve a notice to remedy the failure to pay rent on the eighth day the rent has been unpaid. The notice to remedy must clearly state that the tenant may negate the effect of the notice by paying the rent arrears at any time during the notice period. The remedy period shall be a further 7 days
- once the notice to remedy has been served the tenant may negate the effect of the notice by paying the full amount of the rent owing. The tenant must do this within 7 days of receiving the notice. If the tenant does pay the rent in arrears within this seven day period, the tenancy continues and the lessor can no longer use the failure as a ground to terminate the tenancy agreement;

- if the tenant fails to pay the rent as required by the notice to remedy, the lessor may then serve a notice to vacate on the tenant requiring the tenant to vacate the premises within 14 days, the lessor may apply, at the same time, to the Tribunal for a termination hearing;
- the Tribunal may list the matter for hearing at any time after the expiry of the above 14 day notice to vacate period. The registrar of the Tribunal must give the tenant 1 weeks notice in writing of the Tribunal hearing; and
- if the tenant does not vacate the premises, the hearing takes place as Scheduled;
- the proposed Act should require the Tribunal to hear applications for termination for non payment of rent as soon as practicable after the expiry of the 2 week notice to vacate period.

If the tenant fails to pay rent for more than 7 days on a third occasion, the lessor may serve a notice to vacate on the tenant after the rent has been unpaid and owing for 7 clear days. There should be no requirement to serve a notice to remedy.

Termination of tenancy for breach other than non-payment of rent.

Clause 93

implements Recommendation 151 - that in cases of breach (other than breach due to non-payment of rent or vacation of the premises) of the tenancy agreement by the tenant, the lessor should be required to serve a notice in writing on the tenant requiring the tenant to remedy the breach within 14 days and:

- if the tenant then fails to remedy the breach the lessor can serve a notice to vacate in writing on the tenant requiring the tenant to vacate within 14 days; and
- if the tenant then fails to vacate then the lessor can apply to the Tribunal for an order for termination of the tenancy and eviction of the tenant.
- If the tenant breaches the same term of the tenancy agreement on 3 occasions then on the third occasion, the lessor should not be required to give the tenant an opportunity to remedy the breach.
- In this case after the third breach the lessor should be able to serve the written notice requiring the tenant to vacate within 14 days; and if the tenant does not vacate, apply to the Tribunal for termination of the tenancy.

Termination of tenancy without cause

Clause 94 implements the final point in recommendation 150 - that the lessor should be able to terminate the tenancy after expiry of the fixed term in the absence of any grounds provided the lessor gives the tenant 26 weeks notice to vacate.

Clause 95 implements the first 2 points of Recommendation 141 - that a tenant who intends to vacate the premises in response to a notice to vacate from the lessor, may

- vacate the premises on the day nominated in the notice to vacate as the day on which the lessor requires vacant possession of the premises (hereafter the nominated date); or
- vacate the premises on any day during the 2 week period prior to the nominated date provided the tenant first gives the lessor 4 days notice (verbal notice shall be sufficient) of the day on which the tenant intends to vacate the premises.

In either of the above 2 cases, the tenancy shall end on the day that the tenant vacates the premises.

If the tenant does not give the lessor 4 days notice of intention to vacate the premises on a date prior to the nominated date, then the proposed Act shall deem the tenancy to continue until the nominated date irrespective of the day on which the tenant vacates the premises

Termination of periodic tenancy

Clause 96 implements the first 4 points in Recommendation 150 - that the lessor should be able to terminate the tenancy on any of the following grounds in addition to breach of the tenancy agreement;

- the lessor or the lessor's immediate relative intends to reside in the premises; the lessor must give the tenant 4 weeks notice in writing to vacate the premises;
- a person (other than immediate relative) who:
 - has a close family or personal relationship with the lessor and therefore a reasonable expectation that the lessor will assist the person to find accommodation
 - intends to reside in the premises, and the lessor has obtained the approval of the Tribunal for termination on this ground at a hearing of which the tenant had adequate notice; 4 weeks notice required,

- the lessor has a bona fide intention to sell the premises; 8 weeks notice required;
- the lessor has a bona fide intention to reconstruct, make major repairs or renovations which cannot reasonably be carried out while the tenant is in occupation of the premises; 12 weeks notice required; and

Clause 97

implements the first 2 points of Recommendation 141 - that a tenant who intends to vacate the premises in response to a notice to vacate from the lessor, may:

- vacate the premises on the day nominated in the notice to vacate as the day on which the lessor requires vacant possession of the premises (hereafter the nominated date); or
- vacate the premises on any day during the 2 week period prior to the nominated date provided the tenant first gives the lessor four days notice (verbal notice shall be sufficient) of the day on which the tenant intends to vacate the premises.

In either of the above 2 cases, the tenancy shall end on the day that the tenant vacates the premises.

If the tenant does not give the lessor 4 days notice of intention to vacate the premises on a date prior to the nominated date, then the proposed Act shall deem the tenancy to continue until the nominated date irrespective of the day on which the tenant vacates the premises.

Significant hardship

Clause 98

deals with Recommendation 149 - the lessor should be able to apply to the Tribunal for early termination of the tenancy on the basis that if the tenancy were to continue the lessor would suffer severe hardship. The Tribunal may terminate the lease after consideration of the hardship that the lessor would suffer if the tenancy were to continue and the hardship the tenant would suffer if the tenancy were to end.

Notices of address for service

Clause 99

implements the first and third points of Recommendation 26 - that:

- the lessor should be obliged to nominate an address or addresses for service in the tenancy agreement; and
- the lessor should be able to change the nominated address as required during the tenancy.

(The second point is covered by section 17A of the Interpretation Act 1967.)

Clause 100 implements Recommendation 145 - that the tenant should be required to provide the lessor with a contact address at or before vacating the premises which the lessor can use to contact the tenant after termination of the tenancy.

Clause 101 implements Recommendation 5: that there should be a presumption that where 2 or more people share a tenancy, they do so as joint tenants.