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|--|--------------------------|--------------------------|
| 11. Transcripts of Electronic Records of Interview placed on the file
(both original transcripts and those edited for trial should be retained) | <input type="checkbox"/> | <input type="checkbox"/> |
| 12. Transcripts of Proceedings (committal and trial) placed on the file | <input type="checkbox"/> | <input type="checkbox"/> |
| 13. Correspondence , memoranda and file notes placed on the file | <input type="checkbox"/> | <input type="checkbox"/> |
| 14. Non-documentary exhibits returned to the SCLO or circuit DCLO with
Returned Exhibit List | <input type="checkbox"/> | <input type="checkbox"/> |
| 15. Court exhibit list provided to SCLO or circuit DCLO | <input type="checkbox"/> | <input type="checkbox"/> |
| 16. Original search warrant returned to SCLO or circuit DCLO | <input type="checkbox"/> | <input type="checkbox"/> |
| 17. Reporting police station notified of finalisation <i>where defendant
required to report pursuant to bail undertaking</i> | <input type="checkbox"/> | <input type="checkbox"/> |
| 18. Persons other than victims noted on the file as requiring notice have
been so notified (eg: S. 222 appeals – QPS Solicitor; A/O sent a copy
of confiscation order) | <input type="checkbox"/> | <input type="checkbox"/> |

Notes

Certification

I certify the items endorsed above have been completed and that there has been no destruction of materials on this file, save for superfluous copies

Clerk:

Signature:

Date:

Relevant Law

1. The applicant seeks exclusion of evidence pursuant to section 130 of the *Evidence Act*, which provides:

Nothing in this Act derogates from the power of the court in a criminal proceeding to exclude evidence if the court is satisfied that it would be unfair to the person charged to admit that evidence.

Prejudicial vs Probative Value of Evidence

2. In *Noor Mohamed v The King*¹, the applicant was convicted of the murder of his second wife by poisoning. Despite objections from defence counsel, evidence was admitted that the applicant had said "I will get rid of you as I got rid of my first wife." Lord du Parc² remarked:

[I]n all such cases the judge ought to consider whether the evidence which it is proposed to adduce is sufficiently substantial, having regard to the purpose to which it is professedly directed, to make it desirable in the interest of justice that it should be admitted. If, so far as that purpose is concerned, it can in the circumstances of the case have only trifling weight, the judge will be right to exclude it. To say this is not to confuse weight with admissibility. The distinction is plain, but cases must occur in which it would be unjust to admit evidence of a character gravely prejudicial to the accused even though there may be some tenuous ground for holding it technically admissible. The decision must then be left to the discretion and the sense of fairness of the judge.²

3. In *R v Duke*³ the evidence the subject of the appeal was evidence of black fibres similar to those of the accused's car floor mats being found on the complainant's dress and blue fibres similar to those of the complainant's dress being found on the back seat of the accused's vehicle. Defence objected to the leading of such evidence. In his judgement, which was accepted by Mitchell J⁴ and Mohr J⁵ as being correct on this issue, King CJ made the following remarks:

The argument before us was that the weight of the evidence was slight and its prejudicial effect was great, and that it should have been excluded for that reason.

The general principle is that the prosecution is entitled to have placed before the jury all evidence which is legally admissible unless there exists one of the recognised grounds for the exclusion of the evidence in the exercise of the judge's discretion.⁶

4. King CJ then referred to *Noor Mohamed v The King* (and the passage quoted above at [9]) and then remarked:

The prejudice there referred to must, of course be a prejudice additional to or distinct from the detriment to the accused's interests involved in the probative force of the evidence. The prejudicial tendency must outweigh the probative value, as Cross on Evidence puts it in the Australian edition (1970) at p 31, "in that sense that the jury may attach undue weight to it or use it for inadmissible purposes". It was said in this case that the evidence was of such little weight that it was too dangerous to allow it to go to the jury. Generally speaking the fact that the weight to be attached to a piece of evidence is slight does not render its introduction to the jury dangerous. It must be assumed that the jury will give the piece of evidence the weight that it deserves. The danger arises only if there is something in the nature of the evidence or the manner of

¹ [1949] AC 182.

² [1949] AC 182 at 192.

³ (1979) 22 SASR 46.

⁴ (1979) 22 SASR 46 at 54.

⁵ (1979) 22 SASR 46 at 58.

⁶ (1979) 22 SASR 46 at 47.

*its presentation which would render it gravely prejudicial in the sense referred to above.*⁷

5. When considering the admissibility of the evidence of the analysis of the fibres located, King CJ remarked:

*Where does the suggested prejudice lie? There is nothing in the intrinsic nature of the evidence which could give rise to prejudice. In this the case differs from those cases in which the evidence discloses a criminal record, or conduct or circumstances which may show the accused in a bad light in relation to matters which are extraneous to the issues in the case, or features of the case which might inflame the minds of the jury and thus deflect them from a dispassionate consideration of the issues.*⁸

6. King CJ concluded in relation to this issue:

*I am unable to see that there could be any prejudice to the applicant from the evidence objected to other than the prejudice which arises from the probative force of the evidence itself. If the probative force is slight, the jury might be expected to appreciate that and to attach no more than slight weight to it.*⁹

7. This issue was further considered in *R v Edelsten*¹⁰, where the New South Wales Court of Criminal Appeal said:

*Relevant prejudice is prejudice consisting of something other than a tendency to show guilt of the crime charged.*¹¹

8. The matter of *Festa v The Queen*¹² involved a trial wherein the two co-accused were found guilty of offences of armed robbery and unlawful use of a motor vehicle. The evidence the subject of the appeal to the High Court related to identification evidence from four witnesses that Festa was present in circumstances that indicated she was involved in the crimes.¹³

9. The evidence from the first three witnesses was circumstantial and, at its best, showed that the accused was, at the time of each bank robbery, near the scene of the crime, in the company of a male, and associated with a car of the kind used in the robbery. Gleeson CJ remarked:

*If those facts were established, they could form part of the basis for an inference that the appellant was one of the robbers.*¹⁴

10. Counsel for the appellant contended that the identification evidence should have been excluded.

11. When discussing the admissibility of evidence, Gleeson CJ remarked:

*If evidence is of some, albeit slight, probative value, then it is admissible unless some principle of exclusion comes into play to justify withholding it from a jury's consideration. It is not enough to say that it is 'weak', and, as already mentioned, whether it is weak might depend on what use is made of it.*¹⁵

12. McHugh J remarked in the matter of *Festa*:

[E]vidence is not prejudicial merely because it strengthens the prosecution case. It is prejudicial only when the jury are likely to give the evidence more weight than it

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deserves or when the nature or content of the evidence may inflame the jury or divert the jurors from their task.¹⁶

Summary of Judicial Discretion Under s130

13. In the matter of *R v Hasler; ex parte Attorney-General*¹⁷, Thomas J provided the following summary regarding the principles relevant to the exercise of the discretion to exclude evidence pursuant to s130:

It is desirable that I attempt to summarise the conclusions I have reached from reviewing the relevant authorities on this question.

(a) The exercise of the discretion is not a simple balancing function in which the judge decides whether the overall effect of the evidence is more prejudicial to the accused than it is beneficial to the Crown case. Sometimes the discretion is elliptically described in headnotes and elsewhere as a 'discretion to exclude where prejudicial value outweighs probative value'. Such abbreviations should not be permitted to modify or distort the true test, and should be recognised as mere shorthand references to it.

*(b) Exclusion should occur only when the evidence in question is of relatively slight probative value and the prejudicial (sic) effect of its admission would be substantial. Without dissenting from any of the five formulations quoted above, it is apparent that those stated by Barwick CJ and by Stephen and Aickin JJ in *Bunning v Cross* give proper recognition to these factors and that they may safely be used as concise working statements of the principle.*

(c) In performing the balancing exercise, the only evidence that should be thrown into the 'prejudice' scale is that which shows discreditable conduct other than those facts which directly tend to prove the offence itself. The 'prejudice' cannot refer to the damage to the accused's case through direct proof of the offence. To speak of a 'balancing' of prejudicial effect against probative value of such evidence is absurd, because the weight of each will be exactly the same. If prejudice arising from strict proof of the case were to go into the 'prejudice' scale, then the additional prejudicial effect would always tip the scales and the evidence would never be admissible.¹⁸

Circumstantial Cases – Links in a Chain vs Strands in a Cable

14. The issue of circumstantial evidence was considered by the High Court of Australia in *Shepherd v The Queen*¹⁹. In relation to a definition, Dawson J remarked:

Circumstantial evidence is evidence of a basic fact or facts from which the jury is asked to infer a further fact or facts. It is traditionally contrasted with direct or testimonial evidence, which is the evidence of a person who witnessed the event sought to be proved.²⁰

15. When discussing the different types of circumstantial evidence, Dawson J remarked:

[I]t may sometimes be necessary or desirable to identify those intermediate facts which constitute indispensable links in a chain of reasoning towards an inference of guilt. Not every possible intermediate conclusion of fact will be of that character. If it is appropriate to identify an intermediate fact as indispensable it may well be appropriate

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16. Dawson J continued:

As I have said, the prosecution bears the burden of proving all the elements of the crime beyond reasonable doubt. That means that the essential ingredients of each element must be so proved. It does not mean that every fact - every piece of evidence - relied upon to prove an element by inference must itself be proved beyond reasonable doubt.

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[T]he jury may quite properly draw the necessary inference having regard to the whole of the evidence, whether or not each individual piece of evidence relied upon is proved beyond reasonable doubt, provided they reach their conclusion upon the criminal standard of proof. Indeed, the probative force of a mass of evidence may be cumulative, making it pointless to consider the degree of probability of each item of evidence separately.²²

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It is your responsibility to ensure that this email does not contain and is not affected by computer viruses, defects or interferences by third parties or replication problems.



Form 23 - NOTICE TO BE SERVED WITH FORM 21 SUBPOENA

THIS IS A VERY IMPORTANT DOCUMENT - PLEASE READ IT VERY CAREFULLY

Failure to comply with subpoena may result in arrest

Failure to comply with this subpoena without lawful excuse is contempt of court and may result in your arrest.

Not all subpoenas will specify a particular date and time to attend

The courts often list a number of cases in the same time period. As cases are completed or adjourned, others may progress up the list. The lists are constantly reviewed to maximise use of court time and to reduce the costs to the taxpayer. If you have not been given a definite date and time in the subpoena, the party serving the subpoena must, as soon as practicable, advise you when you are required to attend court or if your attendance is no longer required (rule 29 *Criminal Practice Rules 1999*).

Entitlement to travelling expenses

A person must comply with a subpoena only if an amount sufficient to meet the person's reasonable travelling expenses in complying with the subpoena, or a ticket or other travel document needed to comply with it, is tendered either when the subpoena is served or within a reasonable time before the attendance under the subpoena is required (rule 35 *Criminal Practice Rules 1999*).

Application to set aside subpoena

A person who has been served with a subpoena may apply to the court for an order to set aside the subpoena. If it is a subpoena to produce documents, an application may also be made to narrow its scope {eg. - by reducing the number of documents to be produced}.

If the application to set aside or narrow the subpoena is successful, the applicant may apply to the court for an order that all or part of the applicant's costs incurred in applying to have the subpoena set aside or narrowed be paid by -

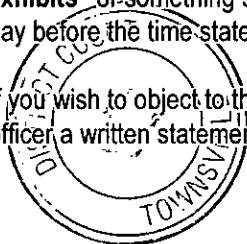
- (1) The party who served the subpoena; or
- (2) If the court finds the conduct of the party's lawyer in serving the subpoena was oppressive, vexatious or an abuse of process - the party's lawyer (rule 33-35 *Criminal Practice Rules 1999*).

The applicant must serve a copy of the application to set aside a subpoena on the person who served the subpoena (rule 33 *Criminal Practice Rules 1999*).

Subpoena to produce medical or hospital records or records of a Department of Government or a Statutory Authority of the Commonwealth or State

If a subpoena requires the production of a medical record, hospital record or a record of a Department of Government, or a Statutory Authority of the Commonwealth or State, the served person may comply by giving the record to the proper officer of the court in a sealed envelope clearly marked "court exhibits" or something similar. The record is to be given to the proper officer at least one (1) clear day before the time stated for production in the subpoena (rule 30 *Criminal Practice Rules 1999*).

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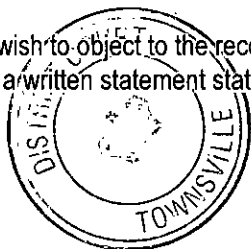
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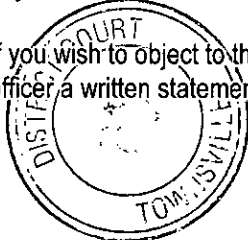
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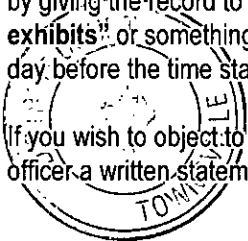
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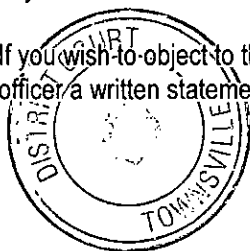
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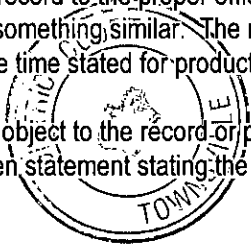
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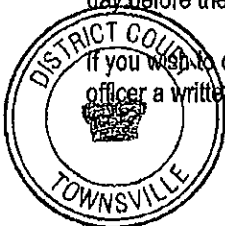
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Part 2 Standard Terms

Division 1 Preliminary

1 Interpretation

In this agreement –

- (a) a reference to *the premises* includes a reference to any inclusions for the premises stated in this agreement for item 5.2; and
- (b) a reference to a numbered section is a reference to the section in the Act with that number; and
- (c) a reference to a numbered item is a reference to the item with that number in part 1; and
- (d) a reference to a numbered clause is a reference to the clause of this agreement with that number.

2 Terms of a general tenancy agreement

- (1) This part states, under the *Residential Tenancies and Rooming Accommodation Act 2008 (the Act)*, section 55, the standard terms of a general tenancy agreement.
- (2) The Act also imposes duties on, and gives entitlements to, the lessor and tenant that are taken to be included as terms of this agreement.
- (3) The lessor and tenant may agree on other terms of this agreement (*special terms*).
- (4) A duty or entitlement under the Act overrides a standard term or special term if the term is inconsistent with the duty or entitlement.
- (5) A standard term overrides a special term if they are inconsistent.

Note: Some breaches of this agreement may also be an offence under the Act, for example, if –

- the lessor or the lessor's agent enters the premises in contravention of the rules of entry under sections 192 to 199; or
- the tenant does not sign and return the entry condition report to the lessor or the lessor's agent under section 85.

3 More than 1 lessor or tenant

- (1) This clause applies if more than 1 person is named in this agreement for item 1 or 2.
- (2) Each lessor named in this agreement for item 1 must perform all of the lessor's obligations under this agreement.
- (3) Each tenant named in this agreement for item 2 –
 - (a) holds their interest in the tenancy as a tenant in common unless a special term states the tenants are joint tenants; and
 - (b) must perform all the tenant's obligations under this agreement.

Division 2 Period of tenancy

4 Start of tenancy

- (1) The tenancy starts on the day stated in this agreement for item 6.2.
- (2) However, if no day is stated or if the stated day is before the signing of this agreement, the tenancy starts when the tenant is or was given a right to occupy the premises.

5 Entry condition report – s65

- (1) The lessor must prepare, in the approved form, sign and give the tenant 1 copy of a condition report for the premises.
- (2) The copy must be given to the tenant on or before the day the tenant occupies the premises under this agreement.
- (3) The tenant must mark the copy of the report to show any parts the tenant disagrees with, and sign and return the copy to the lessor not later than 3 days after the later of the following days –
 - (a) the day the tenant is entitled to occupy the premises;
 - (b) the day the tenant is given the copy of the condition report.

Note: A well completed condition report can be very important to help the parties if there is a dispute about the condition of the premises when the tenancy started. For more information about condition reports, see the information statement.

- (4) After the copy of the condition report is returned to the lessor by the tenant, the lessor must copy the condition report and return it to the tenant within 14 days.

6 Continuation of fixed term agreement – s 70

- (1) This clause applies if –
 - (a) this agreement is a fixed term agreement; and
 - (b) none of the following notices are given, or agreements or applications made before the day the term ends (*the end day*) –

- (i) a notice to leave;
- (ii) a notice of intention to leave;
- (iii) an abandonment termination notice;
- (iv) a notice, agreement or application relating to the death of a sole tenant under section 277(7);
- (v) a written agreement between the lessor and tenant to end the agreement.

- (2) This agreement, other than a term about this agreement's term, continues to apply after the end day on the basis that the tenant is holding over under a periodic agreement.

Note: For more information about the notices, see the information statement.

7 Costs apply to early ending of fixed term agreement

- (1) This clause applies if –
 - (a) this agreement is a fixed term agreement; and
 - (b) the tenant terminates it before the term ends in a way not permitted under the Act.
- (2) The tenant must pay the reasonable costs incurred by the lessor in reletting the premises.

Note: For when the tenant may terminate early under the Act, see clause 36 and the information statement. Under section 362, the lessor has a general duty to mitigate (avoid or reduce) the costs.

Division 3 Rent

8 When, how and where rent must be paid – ss 83 and 85

- (1) The tenant must pay the rent stated in this agreement for item 7.
- (2) The rent must be paid at the times stated in this agreement for item 8.
- (3) The rent must be paid –
 - (a) in the way stated in this agreement for item 9; or
 - (b) in the way agreed after the signing of this agreement by –
 - (i) the lessor or tenant giving the other party a notice proposing the way; and
 - (ii) the other party agreeing to the proposal in writing; or
 - (c) if there is no way stated in this agreement for item 9 or no way agreed after the signing of this agreement – in an approved way under section 83(4).

Note: If the way rent is to be paid is another way agreed on by the lessor and tenant under section 83(4)(g), the lessor or the lessor's agent must comply with the obligations under section 84(2).

- (4) The rent must be paid at the place stated in this agreement for item 10.
- (5) However, if, after the signing of this agreement, the lessor gives a notice to the tenant stating a different place for payment and the place is reasonable, the rent must be paid at the place while the notice is in force.
- (6) If no place is stated in this agreement for item 10 and there is no notice stating a place, the rent must be paid at an appropriate place.
Examples of an appropriate place –
 - The lessor's address for service.
 - The lessor's agent's office.

9 Rent in advance – s 87

The lessor may require the tenant to pay rent in advance only if the payment is not more than –

- (a) for a periodic agreement – 2 weeks rent; or
- (b) for a fixed term agreement – 1 month rent.

Note: Under section 87(2), the lessor or lessor's agent must not require a payment of rent under this agreement in a period for which rent has already been paid.

10 Rent increases – ss 91 and 93

- (1) If the lessor proposes to increase the rent, the lessor must give notice of the proposal to the tenant.
- (2) The notice must state the amount of the increased rent and the day from when it is payable.
- (3) The day stated must not be earlier than the later of the following –
 - (a) 2 months after the notice is given;
 - (b) 6 months after the day the existing rent became payable by the tenant.
- (4) Subject to an order of a tribunal, the increased rent is payable from the day stated in the notice, and this agreement is taken to be amended accordingly.

- (5) However, if this agreement is a fixed term agreement, the rent may be increased before the term ends only if a special term –
- provides for a rent increase; and
 - states the amount of the increase or how the amount of the increase is to be worked out.
- (6) A rent increase is payable by the tenant only if the rent is increased under this clause.

11 Application to tribunal about excessive increase – s 92

- If a notice of proposed rent increase is given and the tenant considers the increase is excessive, the tenant may apply to a tribunal for an order setting aside or reducing the increase.
- However, the application must be made –
 - within 30 days after the notice is received; and
 - for a fixed term agreement – before the term ends.

12 Rent decreases – s 94

Under section 94, the rent may decrease in certain situations.
Note: For details of the situations, see the information statement.

Division 4 Rental bond

13 Rental bond required – ss 111 and 116

- If a rental bond is stated in this agreement for item 11, the tenant must pay to the lessor or the lessor's agent the rental bond amount-
 - if a special term requires the bond to be paid at a stated time – at the stated time; or
 - if a special term requires the bond to be paid by instalments – by instalments; or
 - otherwise – when the tenant signs this agreement.

Note: There is a maximum bond that may be required. See section 146 and the information statement.
- The lessor or the lessor's agent must, within 10 days of receiving the bond or a part of the bond, pay it to the authority and give the authority a notice, in the approved form, about the bond.
- The bond is intended to be available to financially protect the lessor if the tenant breaches this agreement.

Example -

The lessor may claim against the bond if the tenant does not leave the premises in the required condition at the end of the tenancy.

Note -

For how to apply to the authority or a tribunal for the bond at the end of the tenancy, see the information statement and sections 125 to 141. Delay in applying may mean that payment is made on another application for payment.

14 Increase in bond – s 154

- The tenant must increase the rental bond if –
 - the rent increases and the lessor gives notice to the tenant to increase the bond; and
 - the notice is given at least 11 months after –
 - this agreement started; or
 - if the bond has been increased previously by a notice given under this clause – the day stated in the notice, or the last notice, for making the increase.
- The notice must state the increased amount and a day by which the increase must be made.
- For subclause (2), the day must be at least 1 month after the tenant is given the notice.

Division 5 Outgoings

15 Outgoings – s 163

- The lessor must pay all charges, levies, premiums, rates or taxes for the premises, other than a service charge.
Examples -
 body corporate levies, council general rates, sewerage charges, environment levies, land tax
- This clause does not apply if –
 - the lessor is the State; and
 - rent is not payable under the agreement; and
 - the tenant is an entity receiving financial or other assistance from the State to supply rented accommodation to persons.

16 General service charges – ss 164 and 165

The tenant must pay a service charge, other than a water service charge, for a service supplied to the premises during the tenancy if –

- the tenant enjoys or shares the benefit of the service; and
- the service is stated in this agreement for item 12.1; and
- either –
 - the premises are individually metered for the service; or
 - this agreement states for item 13 how the tenant's apportionment of the cost of the service is to be worked out; and
- this agreement states for item 14 how the tenant must pay for the service.

Note: Section 165(3) limits the amount the tenant must pay.

17 Water service charges - ss 164 and 166

- The tenant must pay an amount for the water consumption charges for the premises if –
 - the tenant is enjoying or sharing the benefit of a water service to the premises; and
 - the premises are individually metered for the supply of water or water is supplied to the premises by delivery by means of a vehicle; and
 - this agreement states for item 12.2 that the tenant must pay for water supplied to the premises.

Note: A water consumption charge does not include the amount of a water service charge that is a fixed charge for the water service.
- However, the tenant does not have to pay an amount –
 - that is more than the amount of the water consumption charges payable to the relevant water supplier; or
 - that is a fixed charge for the water service to the premises.
- Also, the tenant does not have to pay an amount for a reasonable quantity of water supplied to the premises for a period if, during the period, the premises are not water efficient for section 166.
Note: For details about water efficiency, see the information statement.
- In deciding what is a reasonable quantity of water for subclause (3), regard must be had to the matters mentioned in section 169(4)(a) to (e).
- The tenant must pay the amount of the charge to the lessor within 1 month of the lessor giving the tenant copies of relevant documents about the incurring of the amount.
- In this clause –

Water consumption charge, for premises, means the variable part of a water service charge assessed on the volume of water supplied to the premises.

Note: If there is a dispute about how much water (or any other service charge) the tenant should pay, the lessor or the tenant may attempt to resolve the dispute by conciliation. See the information statement for details.

Division 6 Rights and obligations concerning the premises during tenancy

Subdivision 1 Occupation and use of premises

18 No legal impediments to occupation – s 181

The lessor must ensure there is no legal impediment to occupation of the premises by the tenant as a residence for the term of the tenancy if, when entering into this agreement, the lessor knew about the impediment or ought reasonably to have known about it.

Examples of possible legal impediments-

- if there is a mortgage over the premises, the lessor might need to obtain approval from the mortgagee before the tenancy can start
- a certificate might be required under the *Building Act 1975* before the premises can lawfully be occupied
- the zoning of the land might prevent use of a building on the land as a residence

19 Vacant possession and quiet enjoyment – ss 182 and 183

- The lessor must ensure the tenant has vacant possession of the premises (other than a part of the premises that the tenant does not have a right to occupy exclusively) on the day the tenant is entitled to occupy the premises under this agreement.

Editor's note -

Parts of the premises where the tenant does not have a right to occupy exclusively may be identified in a special term.

- (2) The lessor must take reasonable steps to ensure the tenant has quiet enjoyment of the premises.
- (3) The lessor or lessor's agent must not interfere with the reasonable peace, comfort or privacy of the tenant in using the premises.

20 Lessor's right to enter the premises – ss 192-199

The lessor or the lessor's agent may enter the premises during the tenancy only if the obligations under sections 192 to 199 have been complied with.

Note: See the information statement for details.

21 Tenant's use of premises – ss 10 and 184

- (1) The tenant may use the premises only as a place of residence or mainly as a place of residence or for another use allowed under a special term.
- (2) The tenant must not –
 - (a) use the premises for an illegal purpose; or
 - (b) cause a nuisance by the use of the premises; or
Examples of things that may constitute a nuisance –
 - using paints or chemicals on the premises that go onto or cause odours on adjoining land
 - causing loud noises
 - allowing large amounts of water to escape onto adjoining land
 - (c) interfere with the reasonable peace, comfort or privacy of a neighbour of the tenant; or
 - (d) allow another person on the premises to interfere with the reasonable peace, comfort or privacy of a neighbour of the tenant.

22 Units and Townhouses – s 69

- (1) The lessor must give the tenant a copy of any body corporate by-laws under the *Body Corporate and Community Management Act 1997* or *Building Units and Group Titles Act 1980* applicable to –
 - (a) the occupation of the premises; or
 - (b) any common area available for use by the tenant with the premises.
- (2) The tenant must comply with the by-laws.

23 Number of occupants allowed

No more than the number of persons stated in this agreement for item 15 may reside at the premises.

24 Pets

- (1) The tenant may keep pets on the premises only if this agreement states for item 17.1 that pets are approved.
- (2) If this agreement states for item 17.1 that pets are approved and this agreement states for item 17.2 that only –
 - (a) a particular type of pet may be kept, only that type may be kept; or
 - (b) a particular number of pets may be kept, only that number may be kept; or
 - (c) a particular number of a particular type of pet may be kept, only that number of that type may be kept.

Subdivision 2 Standard of premises

25 Lessor's obligations – s 185

- (1) At the start of the tenancy, the lessor must ensure –
 - (a) the premises are clean; and
 - (b) the premises are fit for the tenant to live in; and
 - (c) the premises are in good repair; and
 - (d) the lessor is not in breach of a law dealing with issues about the health or safety of persons using or entering the premises.
- (2) While the tenancy continues, the lessor must –
 - (a) maintain the premises in a way that the premises remain fit for the tenant to live in; and
 - (b) maintain the premises in good repair; and
 - (c) ensure the lessor is not in breach of a law dealing with issues about the health or safety of persons using or entering the premises; and
 - (d) keep any common area included in the premises clean.

Note: For details about the maintenance, see the information statement.
- (3) However, the lessor is not required to comply with subclause (1)(c) or (2)(a) for any non-standard items and the lessor is not responsible for their maintenance if –
 - (a) the lessor is the State; and

- (b) the non-standard items are stated in this agreement and this agreement states the lessor is not responsible for their maintenance; and
- (c) the non-standard items are not necessary and reasonable to make the premises a fit place in which to live; and
- (d) the non-standard items are not a risk to health or safety; and
- (e) for fixtures – the fixtures were not attached to the premises by the lessor.

- (4) In this clause –

non-standard items means the fixtures attached to the premises and inclusions supplied with the premises stated in this agreement for item 5.2.

premises include any common area available for use by the tenant with the premises.

26 Tenant's obligations – s 188(2) and (3)

- (1) The tenant must keep the premises clean, having regard to their condition at the start of the tenancy.
- (2) The tenant must not maliciously damage, or allow someone else to maliciously damage, the premises.

Subdivision 3 The dwelling

27 Fixtures or structural changes – ss 207-209

- (1) The tenant may attach a fixture, or make a structural change, to the premises only if the lessor agrees to the fixture's attachment or the structural change.

Note: Fixtures are generally items permanently attached to land or to a building that are intended to become part of the land or building. An attachment may include, for example, something glued, nailed or screwed to a wall.

- (2) The lessor's agreement must be written, describe the nature of the fixture or change and include any terms of this agreement.
Examples of terms –
 - that the tenant may remove the fixture
 - that the tenant must repair damage caused when removing the fixture
 - that the lessor must pay for the fixture if the tenant can not remove it
- (3) If the lessor does agree, the tenant must comply with the terms of the lessor's agreement.
- (4) The lessor must not act unreasonably in failing to agree.
- (5) If the tenant attaches a fixture, or makes a structural change, to the premises without the lessor's agreement, the lessor may –
 - (a) take action for a breach of a term of this agreement; or
 - (b) waive the breach (that is, not take action for the breach) and treat the fixture or change as an improvement to the premises for the lessor's benefit (that is, treat it as belonging to the lessor, without having to pay the tenant for it).

28 Supply of locks and keys – s 210

- (1) The lessor must supply and maintain all locks necessary to ensure the premises are reasonably secure.
- (2) The lessor must give the tenant, or if there is more than 1 tenant, 1 of the tenants, a key for each lock that –
 - (a) secures an entry to the premises; or
 - (b) secures a road or other place normally used to gain access to, or leave, the area or building in which the premises are situated; or
 - (c) is part of the premises.
- (3) If there is more than 1 tenant, the lessor must give the other tenants a key for the locks mentioned in subclause (2)(a) and (b).

29 Changing locks – ss 211 and 212

- (1) The lessor or the tenant may change locks if –
 - (a) both agree to the change; or
 - (b) there is a tribunal order permitting the change; or
 - (c) there is a reasonable excuse for making the change.
Example of a reasonable excuse –
 an emergency requiring the lock to be changed quickly
- (2) The lessor or tenant must not act unreasonably in failing to agree to the change of a lock.
- (3) If a lock is changed, the party changing it must give the other party a key for the changed lock unless –
 - (a) a tribunal orders that a key not be given; or
 - (b) the other party agrees to not being given a key.

Subdivision 4 Damage and repairs

30 Meaning of emergency and routine repairs – ss 214 and 215

- (1) **Emergency repairs** are works needed to repair any of the following –
- a burst water service or serious water service leak;
 - a blocked or broken lavatory system;
 - a serious roof leak;
 - a gas leak;
 - a dangerous electrical fault;
 - flooding or serious flood damage;
 - serious storm, fire or impact damage;
 - a failure or breakdown of the gas, electricity or water supply to the premises;
 - a failure or breakdown of an essential service or appliance on the premises for hot water, cooking or heating;
 - a fault or damage that makes the premises unsafe or insecure;
 - a fault or damage likely to injure a person, damage property or unduly inconvenience a resident of the premises;
 - a serious fault in a staircase, lift or other common area of the premises that unduly inconveniences a resident in gaining access to, or using, the premises.
- (2) **Routine repairs** are repairs other than emergency repairs.

31 Nominated repairer for emergency repairs – s 216

- (1) The lessor's nominated repairer for emergency repairs of a particular type may be stated either –
- in this agreement for item 18; or
 - in a notice given by the lessor to the tenant.
- (2) The nominated repairer is the tenant's first point of contact for notifying the need for emergency repairs.

32 Notice of damage – s 217

- (1) If the tenant knows the premises have been damaged, the tenant must give notice as soon as practicable of the damage.
- (2) If the premises need routine repairs, the notice must be given to the lessor.
- (3) If the premises need emergency repairs, the notice must be given to –
- the nominated repairer for the repairs; or
 - if there is no nominated repairer for the repairs or the repairer can not be contacted – the lessor.

33 Emergency repairs arranged by tenant – ss 218 and 219

- (1) The tenant may arrange for a suitably qualified person to make emergency repairs or apply to the tribunal under section 221 for orders about the repairs if –
- the tenant has been unable to notify the lessor or nominated repairer of the need for emergency repairs of the premises; or
 - the repairs are not made within a reasonable time after notice is given.
- (2) The maximum amount that may be incurred for emergency repairs arranged to be made by the tenant is an amount equal to the amount payable under this agreement for 2 weeks rent.
- Note:* For how the tenant may require reimbursement for the repairs, see sections 219(2) and (3) and 220 and the information statement.

Division 7 Restrictions on transfer or subletting by tenant

34 General – ss 238 and 240

- (1) Subject to clause 35, the tenant may transfer all or a part of the tenant's interest under this agreement, or sublet the premises, only if the lessor agrees in writing or if the transfer or subletting is made under a tribunal order.
- (2) The lessor must act reasonably in failing to agree to the transfer or subletting.
- (3) The lessor is taken to act unreasonably in failing to agree to the transfer or subletting if the lessor acts in a capricious or retaliatory way.
- (4) The lessor or lessor's agent must not require the tenant to pay, or accept from the tenant, an amount for the lessor's agreement to a transfer or subletting by the tenant, other than an amount for the

reasonable expenses incurred by the lessor in agreeing to the transfer or subletting.

35 State assisted lessor or employees of lessor – s 237

- (1) This clause applies if –
- the lessor is the State; or
 - the lessor is an entity receiving assistance from the State to supply rented accommodation; or
 - the tenant's right to occupy the premises comes from the tenant's terms of employment.
- (2) The tenant may transfer the whole or part of the tenant's interest under this agreement, or sublet the premises, only if the lessor agrees in writing to the transfer or subletting.

Division 8 When agreement ends

36 Ending of agreement – s 277

- (1) This agreement ends only if –
- the tenant and the lessor agree in writing; or
 - the lessor gives a notice to leave the premises to the tenant and the tenant hands over vacant possession of the premises to the lessor on or after the handover day; or
 - the tenant gives a notice of intention to leave the premises to the lessor and hands over vacant possession of the premises to the lessor on or after the handover day; or
 - a tribunal makes an order terminating this agreement; or
 - the tenant abandons the premises.
- (f) after receiving a notice from a mortgagee under section 317, the tenant vacates, or is removed from, the premises.

Note: For when a notice to leave or a notice of intention to leave may be given and its effect and when an application for a termination order may be made to a tribunal, see the information statement.

- (2) Also, if a sole tenant dies, this agreement terminates in accordance with section 277(7) or (8).

Note: See the information statement for details.

37 Condition premises must be left in – s 188(4)

At the end of the tenancy, the tenant must leave the premises, as far as possible, in the same condition they were in at the start of the tenancy, fair wear and tear excepted.

Examples of what may be fair wear and tear –

- wear that happens during normal use
- changes that happen with ageing

38 Keys

At the end of the tenancy, the tenant must return to the lessor all keys for the premises.

39 Tenant's forwarding address – s 205(2)

- (1) When handing over possession of the premises, the tenant must, if the lessor or the lessor's agent asks the tenant in writing to state the tenant's new residential address, tell the lessor or the agent the tenant's new residential address.
- (2) However, subclause (1) does not apply if the tenant has a reasonable excuse for not telling the lessor or agent the new address.

40 Exit condition report – s 66

- (1) As soon as practicable after this agreement ends, the tenant must prepare, in the approved form, and sign a condition report for the premises and give 1 copy of the report to the lessor or the lessor's agent.

Example of what might be as soon as practicable –

when the tenant returns the keys to the premises to the lessor or the lessor's agent.

Note: For the approved form for the condition report, see the information statement. The report may be very important in deciding who is entitled to a refund of the rental bond if there is a dispute about the condition of the premises.

- (2) The lessor or the lessor's agent must, within 3 business days after receiving the copy of the report –
- sign the copy; and
 - if the lessor or agent does not agree with the report – show the parts of the report the lessor or agent disagrees with by marking the copy in an appropriate way; and
 - if the tenant has given a forwarding address to the lessor or agent – make a copy of the report and return it to the tenant at the address.

- (3) The lessor or agent must keep a copy of the condition report signed by both parties for at least 1 year after this agreement ends.

41 Goods or documents left behind on premises – ss 363 and 364

- (1) The tenant must take all of the tenant's belongings from the premises at the end of the tenancy.
(2) The lessor may not treat belongings left behind as the lessor's own property, but must deal with them under sections 363 and 364.

Note: For details of the lessor's obligations under sections 363 and 364, see the information statement. They may include an obligation to store goods and may allow the lessor to sell goods and pay the net sale proceeds (after storage and selling costs) to the public trustee.

Division 9 Miscellaneous

42 Supply of goods and services – s 171

- (1) The lessor or the lessor's agent must not require the tenant to buy goods or services from the lessor or a person nominated by the lessor or agent.
(2) Subclause (1) does not apply to a requirement about a service charge.
Note: See section 164 for what is a service charge.

43 Lessor's agent

- (1) The name and address for service of the lessor's agent is stated in this agreement for item 3.
(2) Unless a special term provides otherwise, the agent may -
(a) stand in the lessor's place in any application to a tribunal by the lessor or the tenant; or
(b) do any thing else the lessor may do, or is required to do, under this agreement.

44 Notices

- (1) A notice under this agreement must be written and, if there is an approved form for the notice, in the approved form.
Note: See the information statement for a list of the approved forms.
(2) A notice from the tenant to the lessor may be given to the lessor's agent.
(3) A notice may be given to a party to this agreement or the lessor's agent -
(a) by giving it to the party or agent personally; or
(b) if an address for service for the party or agent is stated in this agreement for item 1, 2 or 3 - by leaving it at the address, sending it by prepaid post as a letter to the address; or
(c) if a facsimile number for the party or agent is stated in this agreement for item 1, 2 or 3 and item 4 indicates that a notice may be given by facsimile - by sending it by facsimile to the facsimile number in accordance with the *Electronic Transactions (Queensland) Act 2001*; or
(d) if an email address for the party or agent is stated in this agreement for item 1, 2 or 3 and item 4 indicates that a notice may be given by email - by sending it electronically to the email address in accordance with the *Electronic Transactions (Queensland) Act 2001*.
(4) A party or the lessor's agent may withdraw his or her consent to notices being given to them by facsimile or email only by giving notice to each other party that notices are no longer to be given to the party or agent by facsimile or email.
(5) If no address for service is stated in this agreement for item 2 for the tenant, the tenant's address for service is taken to be the address of the premises.
(6) A party or the lessor's agent may change his or her address for service, facsimile number or email address only by giving notice to each other party of a new address for service, facsimile number or email address.
(7) On the giving of a notice of a new address for service, facsimile number or email address for a party or the lessor's agent, the address for service, facsimile number or email address stated in the notice is taken to be the party's or agent's address for service, facsimile number or email address stated in this agreement for item 1, 2 or 3.
(8) Unless the contrary is proved -
(a) a notice left at an address for service is taken to have been received by the party to whom the address relates when the notice was left at the address; and

- (b) a notice sent by post is taken to have been received by the person to whom it was addressed when it would have been delivered in the ordinary course of post; and
(c) a notice sent by facsimile is taken to have been received at the place where the facsimile was sent when the sender's facsimile machine produces a transmission report indicating all pages of the notice have been successfully sent; and
(d) a notice sent by email is taken to have been received by the recipient when the email enters the recipient's email server.

Part 3 Special Terms

The Special Terms in Part 3 have been adopted and approved by The Real Estate Institute of Queensland Ltd.

45 Occupation and use of premises

The tenant must not permit persons other than the persons nominated in the Special Terms to reside at the premises without the written consent of the Lessor. The Lessor must act reasonably in exercising the Lessor's discretion when determining whether or not to consent to a request by the Tenant for any change to the approved Tenants or occupants.

46 Care of the premises by the tenant

- (1) During the tenancy, the tenant must-
(a) not do anything that might block any plumbing or drains on the premises;
(b) keep all rubbish in the bin provided by the local authority in an area designated by the lessor or as the local authority may require;
(c) put the bin out for collection on the appropriate day for collection and return the bin to its designated place after the rubbish has been collected;
(d) maintain the lawns and gardens at the premises having regard to their condition at the commencement of the tenancy, including mowing the lawns, weeding the gardens and watering the lawns and gardens (subject to council water restrictions);
(e) keep the premises free from pests and vermin;
(f) keep the walls, floor, doors and ceilings of the premises free of nails, screws or adhesive substances, unless otherwise agreed to by the lessor in accordance with clause 27;
(g) not intentionally or negligently damage the premises and inclusions;
(h) only hang clothing and other articles outside the premises in areas designated by the lessor or the lessor's agent;
(i) keep the swimming pool, filter and spa equipment (if any) clean and at the correct chemical levels having regard to their condition at the start of the tenancy;
(j) not interfere with nor make non-operational any facility that may be provided with the premises (eg. smoke alarms, fire extinguishers, garden sprinkler systems, hoses etc).
(2) The obligations of the tenant at the end of the occupancy regarding the condition of the premises include -
(a) having the carpets professionally shampooed/steam cleaned -
(i) to the same standard they were in at the start of the tenancy, fair wear and tear excepted; and
(ii) on the last day of the occupancy; and
(iii) giving the lessor or lessor's agent a copy of any professional carpet cleaner's receipt;
(iv) if birds or animals have been kept at the premises, to pay for the premises to be fumigated and deodorised by a professional fumigator.
(b) repairing the tenant's intentional or negligent damage to the premises or inclusions;
(c) returning the swimming pool, filter and spa equipment (if any) to a clean condition with correct chemical levels having regard to their condition at the start of the tenancy;
(d) removing rubbish;
(e) replacing inclusions (fair wear and tear excepted);
(f) mowing lawns, weeding gardens having regard to their condition at the start of the tenancy;
(g) remove all property other than that belonging to the lessor or on the premises at the start of the tenancy.

- (3) If the tenant does not meet the tenant's obligations at the end of the tenancy the lessor or the lessor's agent may pay for this to be done and claim the cost of doing so from the rental bond.

47 Locks and keys and remote controls

- (1) The lessor may claim from the tenant costs incurred by the lessor as a result of the tenant losing any key, access keycard or remote control relating to the premises which has been provided to the tenant (by the lessor, a body corporate or other person), including costs in connection with:
- (a) replacing the key, access keycard or remote control; and
 - (b) gaining access to the premises.
- (2) The tenant acknowledges that the lessor's agent may retain a duplicate set of keys.
- (3) The tenant must return all keys, access keycard's and/or any remote controls to the lessor or the lessor's agent at the end of the tenancy.

48 Early termination by tenant

If the tenancy is breached before the end of the tenancy specified in item 6 despite other provisions of this agreement the lessor may claim from the tenant -

- (a) the rent and service charges until the lessor re-lets the premises or the end of the tenancy as specified in item 6 whichever is the earlier; and
- (b) the reasonable costs (including advertising costs) of re-letting and attempting to re-let the premises. (Sections 173(2) and 420).

49 Liability excluded

The tenant shall be liable for and shall indemnify and defend the lessor or the lessor's agent, its directors, officers, employees, and agents, from, and against, any and all losses, claims, demands, actions, suits (including costs and legal fees on an indemnity basis), and damages, including, but not limited to:

- (a) injury, bodily or otherwise, or death of any person, including the tenant or an approved occupant; or
- (b) loss, damage to, or destruction of, property whether real or personal, belonging to any person, including the tenant or an approved occupant;

as a direct or indirect result of the tenant's negligent acts or omissions or breach of this agreement or obligations under the Act.

50 Lessor's insurance

- (1) If the lessor does have insurance cover the tenant must not do, or allow anything to be done, that would invalidate the lessor's insurance policy for the premises or increase the lessor's premium in relation to that policy.
- (2) The lessor may claim from the tenant -
- (a) any increase in the premium of the lessor's insurance; and
 - (b) any excess on claim by the lessor on the lessor's insurance; and
 - (c) any other cost and expenses incurred by the lessor;
- as a direct or indirect result of the tenant's negligent acts or omissions or breach of this agreement or obligations under the Act.

51 Tenant's insurance

It is the tenant's and approved occupant's responsibility to adequately insure their own property and possessions.

52 Smoke Alarm Obligations

The tenant must-

- (1) Test each smoke alarm in the premises-
- (a) at least once every 12 months; or
 - (b) if a fixed term tenancy is of less than 12 months duration, but is held over under a periodic tenancy of 12 months or more, at least once in the 12 month period:
 - (i) For an alarm that can be tested by pressing a button or other device to indicate whether the alarm is capable of detecting smoke - by pressing the button or other device;
 - (ii) Otherwise, by testing the alarm in the way stated in the Information Statement (RTA Form 17a) provided to the tenant/s at the commencement of the tenancy.
- (2) Replace each battery that is spent, or that the tenant/s is aware is almost spent, in accordance with the Information Statement provided to the tenant/s at the commencement of the tenancy;

- (3) Advise the Lessor as soon as practicable if the tenants becomes aware that a smoke alarm in the premises has failed or is about to fail (other than because the battery is spent or almost spent); and
- Note:* In interpreting the word "spent" when referring to a battery, the term is used to include reference to a battery which is flat, non-functioning or lacking in charge that it does not properly operate the smoke alarm.

- (4) Clean each smoke alarm in the premises in the way stated in the Information Statement provided to the tenant/s at the commencement of the tenancy:
- (a) at least once every 12 months; or
 - (b) if a fixed term tenancy is of less than 12 months duration, but is held over under a periodic tenancy of 12 months or more, at least once in the 12 month period.

In the event that the tenant/s engages a contractor/tradesperson (as listed in Item 18) to meet the tenant/s obligations listed under this clause, such engagement shall be at the tenant/s own cost and expense.

- (5) Not tamper with or otherwise render a smoke alarm inoperative. Such an act will constitute malicious damage in accordance with Section 188 of the Act.

53 Portable Pool Obligations

- (1) The tenant must -
- (a) Obtain the lessor's consent for a portable pool at the premises of a depth of 300mm or greater;
 - (b) Where consent is to be provided by the lessor to the tenant for the use of a portable pool at the premises of a depth of 300mm or greater, provide the lessor and/or the agent with details of the type and description of the proposed portable pool.
- (2) Where consent is provided by the lessor to the tenant for the use of a portable pool at the premises of a depth of 300mm or greater, the tenant agrees to:
- (a) Maintain and repair the portable pool at the tenant's own expense;
 - (b) In accordance with the *Building Act 1975* obtain, maintain and renew a Pool Safety Certificate for a regulated pool, which includes a requirement for a compliant pool fence and, provide a copy of the Pool Safety Certificate to the lessor and/or agent;
 - (c) Where a compliant pool fence is required for a regulated pool, obtain the lessor's consent regarding a proposed fence in accordance with clause 27 of the standard terms;
 - (d) In circumstances where consent is provided to the tenant by the lessor in accordance with clause 27 of the standard terms, construct and maintain the fence as required by the *Building Act 1975*, at the tenant's own expense.
- (3) In accordance with clause 53(1) and 53(2), where consent is provided by the lessor to the tenant for a portable pool of a depth of 300mm or greater and/or as prescribed by the *Building Act 1975*, the tenant hereby agrees to indemnify and hold harmless the lessor and agent for any loss, claim, suit or demand, brought, caused or contributed to, directly or indirectly, by the portable pool.

BRICK
SIDE

