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Short Title and Commencement

1. This Act is cited as The Landlord and Tenant Act 2017 and shall come into effect on ________________________________.

Interpretation

2. In this Act:

agent of a landlord means a person acting on behalf of a landlord

claim notice period means the period specified in a claim notice within which any proceedings affecting the rental bond must be notified to the Commission.

database means a system, device or other thing used for storing information, whether electronically or in some other form.

deposit period means the period within which a rental bond must be deposited with the Commission.

fixed term agreement means a residential tenancy agreement for a tenancy for a fixed term.

function includes a power, authority or duty.

Landlord Includes:

a. the owner of a rental unit or any other person who permits occupancy of a rental unit, other than a tenant who occupies a rental unit in a residential complex and who permits another person to also occupy the unit or any part of the unit,
b. the heirs, assigns, personal representatives and successors in title of a person referred to in clause,
c. A person, other than a tenant occupying a rental unit in a residential complex, who is entitled to possession of the residential complex and who attempts to enforce any of the rights of a landlord under a tenancy agreement, including the right to collect rent.
d. a tenant who has granted the right to occupy residential premises to a sub-tenant, and includes a prospective landlord.
**landlord’s agent** means a person who acts as the agent of a landlord and who (whether or not the person carries on any other business) carries on business as an agent for:

a. the letting of residential premises, or

b. the collection of rents payable for any tenancy of residential premises

**lessee** means a person to whom permission is given, pursuant to a rental agreement, to occupy residential premises and includes his/her assigns and legal representatives

**lessor** means the owner or other person permitting the occupation, pursuant to a rental agreement, of residential premises and includes his heirs, assigns, personal representatives and successors in title

**list** personal information about a person in a residential tenancy database means:

a. enter the personal information into the database, or

b. give the personal information to a database operator or someone else for entry into the database, and includes amend personal information about the person in the database to include additional personal information about the person.

**out-of-date,** in relation to personal information in a residential tenancy database, means the information is no longer accurate because:

a. for a listing made on the basis the person owes a landlord an amount that is more than the rental bond for a residential tenancy agreement—the amount owed was paid to the landlord within 3 months after the amount became due, or

b. for a listing made on the basis the Commission has made a termination order—the order has been suspended, the warrant for possession has lapsed or the parties have entered into a new residential tenancy agreement.

**personal information** means:

a. an individual’s name, or

b. information or an opinion, whether true or not, about an individual whose identity is apparent, or can be reasonably ascertained, from the information or opinion.

**residential tenancy database** means a database:

a. containing personal information:

(i) relating to, or arising from, the occupation of residential premises under a residential tenancy agreement, or

(ii) entered into the database for reasons relating to, or arising from, the occupation of residential premises under a residential tenancy agreement, and
b. the purpose of which is for use by landlords or agents of landlords for checking a person’s tenancy history to decide whether a residential tenancy agreement should be entered into with the person.

*tenant* includes a resident or proposed resident within the meaning of this Act

*rental bond* means an amount of money paid or payable by the tenant or another person as security against any failure by a tenant to comply with the terms of a residential tenancy agreement.

*neighboring property* means:
- a. property adjoining or adjacent to the residential premises, or
- b. property owned by the landlord in the general locality of the residential premises.

*tenant means:*
- a. the person who has the right to occupy residential premises under a residential tenancy agreement, or
- b. the person to whom such a right passes by transfer or operation of the law, or
- c. a sub-tenant of a tenant,
- d. the estate of the deceased tenant
- e. includes a person who pays rent in return for the right to occupy a rental unit and includes the tenant’s heir’s assigns and personal representatives, but “tenant” does not include a person who has the right to occupy a rental unit by virtue of being:
  - i. A co-owner of the residential complex in which the rental unit is located, or
  - ii. a shareholder of a corporation that owns the residential complex.

*record* includes any book, account, document, paper and other source of information compiled, recorded or stored in written form, or on microfilm, or by electronic process, or in any other manner or by any other means.

*rent* means an amount payable by a tenant under a residential tenancy agreement for the right to occupy premises for a period of the agreement.

*residential premises* means any premises or part of premises (including any land occupied with the premises) used or intended to be used as a residence.


**residential tenancy agreement** is an agreement under which a person grants to another person or corporation or entity for value a right of occupation of residential premises for the purpose of use as a residence.

**tenancy** means the right to occupy residential premises under a residential tenancy agreement.

**termination notice** means a notice terminating a residential tenancy agreement.

**termination order** means an order terminating a residential tenancy agreement together with an order for possession of the residential premises.

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**Part 2  APPLICATION OF ACT**

**Act cannot be avoided**

3.

1) Landlords and tenants may not avoid or contract out of this Act or the Regulations.
2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

**Act to bind Crown**

4.

This Act binds the Crown State in right of Republic of Fiji Islands and, in so far as the legislative power of the Parliament of the Republic of Fiji Islands permits, the Crown State in all its other capacities.

**Premises to which Act does not apply**

5.

This Act does not apply in respect of the following premises:

1) buildings or parts of buildings or service apartments used to provide self-contained tourist and visitor accommodation that are regularly cleaned by or on behalf of the owner or manager,
2) premises used as a hotel or motel or backpackers hostel
3) a hospital or nursing home or accommodation by an educational institution or University
4) any part of a club used for the provision of temporary accommodation,
5) premises used for residential purposes, if the predominant use of the premises is for the purposes of a trade, profession, business or agriculture
6) premises used to provide residential care or respite care or social service funded or maintained by the Government of the Republic of Fiji Islands.
Agreements to which Act does not apply

6. This Act does not apply to the following agreements:

1) an agreement under which a person resides in refuge or crisis accommodation of a kind prescribed by the regulations,
2) an agreement that arises under a term of a mortgage and confers a right to occupy residential premises on a party to the mortgage,
3) an agreement made for the purpose of giving a person the right to occupy residential premises for a period of not more than 3 months for the purpose of a holiday,
4) an agreement that arises under a company title scheme under which a group of adjoining or adjacent premises is owned or leased by a corporation each of whose shareholders has, by virtue of his or her shares, an exclusive right to occupy one or more of the residential premises,
5) leases and licenses issued by the I-Taukei Land Trust Board or the Crown Lands Act

Employee and caretaker arrangements

7. 1) An agreement or arrangement under which a person is given the right to occupy premises for the purpose of a residence in return for, or as part of remuneration for, carrying out work in connection with the premises or the person’s employment is taken to be a residential tenancy agreement.
2) This section applies even if the premises are part of premises referred to in section 7 or other premises exempted from this Act by the regulations.

Application of Act to occupants in shared households

8. A person who occupies residential premises that are subject to a written residential tenancy agreement, is not named as a tenant in the agreement and who occupies the premises together with a named tenant is a tenant for the purposes of this Act only if:

1) a tenant under that agreement transfers the tenancy to the person or the person is recognised as a tenant (see Part 4), or
2) the person is a sub-tenant of a tenant under a written residential tenancy agreement with that tenant.

PART 3 RESIDENTIAL TENANCY AGREEMENTS

Form and Content of Residential Tenancy Agreement
9. The residential tenancy agreement shall be
   1) In standard form as per the form prescribed by the Regulations Schedule or
   2) In writing showing terms of the agreement with the minimum requirements as set out hereafter

   (a) the name of the Landlord
   (b) the name of tenant
   (c) the commencement date of the agreement;
   (d) the amount of rent agreed
   (e) the Landlord and tenant’s responsibilities
   (f) Due date for rental payments;
   (g) Methods of rental payment
   (h) Length of tenancy;
   (i) The name and contact details of the landlord’s agent (if any)
   (j) Tax Identification Number (“TIN”) of the landlord;
   (k) Termination notice period
   (l) Any Security deposit or bond payable by the tenant
   (m) Any conditions that can nullify the status of a party in the tenancy agreement

10. Landlord’s obligation to ensure written residential tenancy agreement
   1) The landlord under a residential tenancy agreement must ensure that the agreement is in writing at the commencement of the tenancy.
   2) This section does not:
      (a) impose any obligation on a tenant to prepare a written residential tenancy agreement, or
      (b) affect the enforceability of a residential tenancy agreement that is not in writing or is only partly in writing.
   3) If a landlord fails to comply with this section:
      (a) the rent under the residential tenancy agreement must not be increased during the first 6 months of the tenancy, and
      (b) the landlord is not entitled to terminate the residential tenancy agreement under section 85 during the first 6 months of the tenancy.
   4) The landlord who does not provide any written agreement commits an offence under this section.

11. Certain unexecuted residential tenancy agreements enforceable
If a residential tenancy agreement has been signed by a tenant and given to the landlord or a person on the landlord’s behalf and has not been signed by the landlord:

(a) acceptance of rent by or on behalf of the landlord without reservation, or
(b) any other act of part performance of the agreement by or on behalf of the landlord, gives to the document the same effect it would have if it had been signed by the landlord on the first day in respect of which rent was accepted or on the day on which such an act was first performed.

Prohibited terms

12. –
1) A residential tenancy letting agreement must not contain a term of a kind set out in this section or as prescribed by the regulations for the purpose of this section.
2) A residential tenancy agreement must not contain (unfair and landlord-biased) onerous terms and conditions.
3) Terms having the following effects must not be included in a residential tenancy agreement:
   (a) Visitors not allowed;
   (b) Restrictions on the number of visitors allowed;
   (c) Restrictions on family religious gathering and functions;
   (d) That the tenant must take out a specified, or any form of insurance;
   (e) Exempting the landlord from liability for any act or omission by the landlord, the landlord’s agent or any person acting on behalf of the landlord or landlord’s agent;
   (f) That, if the tenant breaches the agreement, the tenant is liable to pay all or any part of the remaining rent under the agreement, increased rent, a penalty or liquidated damages; and
   (g) Bond money will not be refunded if the tenant pre-maturely ends the tenancy or if tenant is in breach of the agreement.

Inconsistent and Prohibited terms void

13. –
1) The terms of the Residential tenancy agreement must be consistent with this Act and the regulations.
2) A term of a residential tenancy agreement is void to the extent to which it:
   (a) is inconsistent with any term included in the agreement by this Act or the regulations, or
   (b) is prohibited by this Act or the regulations
3) A term of a residential tenancy agreement is void to the extent to which it is inconsistent with the requirements under CCD 2010 or any other laws of Fiji.
4) The landlord who imposes any prohibited or terms inconsistent to this Act on the tenant commits an offence.

**Disclosure of information to tenants generally**

14.

1) **False representations**
   A landlord or landlord’s agent must not induce a tenant to enter into a residential tenancy agreement by any statement, representation or promise that the landlord or agent knows to be false, misleading or deceptive or by knowingly concealing a material fact of a kind prescribed by the regulations.

2) **Disclosure of sale, mortgagee actions**
   A landlord or landlord’s agent must disclose the following to the tenant before the tenant enters into the residential tenancy agreement:
   (a) any proposal to sell the residential premises, if the landlord has prepared a contract for sale of the residential premises,
   (b) that a mortgagee is taking action for possession of the residential premises, if the mortgagee has commenced proceedings in a court to enforce a mortgage over the premises.

3) Subsection (2) does not apply to a landlord’s agent unless the agent is aware of the matters required to be disclosed.

4) The landlord in contravention of this section commits an offence.

5) **Information statement to be given**
   A landlord or landlord’s agent must give a tenant an information statement in the approved form before the tenant enters into the residential tenancy agreement.

**Names and addresses to be provided**

15.

1) A landlord must give the tenant written notice of the following matters before or when the tenant enters into the residential tenancy agreement or include the following matters in the agreement:

   (a) the name, telephone number and business address of the landlord’s agent (if any) and the name and telephone number or other contact details of the landlord,
   (b) if there is no landlord’s agent, the business address, or residential address, and telephone number, of the landlord,
   (c) if the landlord is a corporation, the name, tin number and the business address of the corporation.
2) A landlord must notify the tenant in writing within 14 days of any change during the residential tenancy agreement in the information provided under this section.

**Tenant entitled to copy of residential tenancy agreement**

16.  
1) The landlord or landlord’s agent must give a copy of the signed residential tenancy agreement to the tenant(s) at the time of execution of the agreement.

2) The landlord or landlord’s agent and tenant must sign the agreement within seven (7) days of negotiation, failure to sign the agreement within the period will deem the agreement unenforceable.

3) The landlord in contravention of this section commits an offence.

**PART 4  CONDITION REPORTS**

**Condition Reports**

17.  
1) A condition report relating to the condition of residential premises on a day specified in the report must be completed by or on behalf of a landlord before or when the residential tenancy agreement is given to the tenant for signing.

2) Two copies of the condition report must be given by the landlord or landlord’s agent to the tenant before or when the tenant signs the residential tenancy agreement.

3) The tenant must complete and give one copy of the condition report to the landlord or landlord’s agent not later than 7 days after receiving it and both the landlord and the tenant must retain a copy of the report.

4) At, or as soon as reasonably practicable after, the termination of a residential tenancy agreement, the landlord or landlord’s agent and the tenant must complete the copy of the condition report retained by the landlord or the tenant under this section, in the presence of the other party.

5) It is not a breach of subsection (4) for the condition report to be completed in the absence of the other party if the party completing the report has given the other party a reasonable opportunity to be present when it is completed.
6) A condition report is to be in the form prescribed by the regulations and may be included in a prescribed standard form of residential tenancy agreement.

**Condition report evidence of condition of premises**

18.

1) A condition report that is signed by both the landlord and the tenant is presumed to be a correct statement.

2) This section does not apply:

   (a) to any matter that could not have reasonably been discovered on a reasonable inspection of the premises, or

   (b) to any statement in the report about which the tenant makes a written dissenting comment on the copy of the report completed by the tenant and retained by the landlord.

3) The landlord in contravention of this Part 4 commits an offence.

**PART 5 - Rights and Obligations of Landlords and Tenants**

**Division 1 - Rent and other payments**

**Limit on amounts payable by tenant before agreement**

19.

1) A landlord or landlord’s agent must not require or receive from a tenant, before or when the tenant enters into the residential tenancy agreement, a payment other than the following:

   (a) a holding fee,
   (b) rent,
   (c) a rental bond,
   (d) an amount for the fee (if any) payable for registration of a residential tenancy agreement.

2) Without limiting this section, a person must not require or receive from a tenant an amount for the costs of preparation of a written residential tenancy agreement.

3) The landlord in contravention of this section commits an offence.

**Payment of Rent by Tenant**
20.
1) A tenant must pay the rent under a residential tenancy agreement on or before the date set out in the agreement.

2) A landlord, or landlord’s agent, must not require a tenant to pay more than one month’s rent in advance under a residential tenancy agreement or to pay rent for a period of the tenancy before the end of the previous period for which rent has been paid.

3) A landlord, or landlord’s agent, must not knowingly appropriate rent paid by the tenant for the purpose of any amount payable by the tenant other than rent.

Acceptance of rent by landlord

21.
A landlord must accept payment of unpaid rent by a tenant if:

(a) the landlord has given a termination notice on the ground of failure to pay rent under the residential tenancy agreement, and

(b) the tenant has not vacated the residential premises.

Manner of payment of rent

22.
1) A landlord, landlord’s agent or other person must not require a tenant to pay rent by a cheque or other negotiable instrument that is post-dated.

2) A landlord or landlord’s agent must permit a tenant to pay the rent by at least one means for which the tenant does not incur a cost (other than bank fees or other account fees usually payable for the tenant’s transactions) and that is reasonably available to the tenant.

3) A landlord and the tenant may, by agreement, change the manner in which rent is payable under the residential tenancy agreement.

Rent Receipts

23.
1) If rent under a residential tenancy agreement is paid in person (other than by cheque), the person who receives the payment must, when the payment is made, give the person making the payment a rent receipt.

2) If rent under a residential tenancy agreement is paid by cheque, the person who receives the payment must make the receipt available for collection by the tenant or post it to the residential premises.

3) A rent receipt is a receipt that contains the following matters:
   (a) the name of the person who receives the rent or on whose behalf the rent is received,
   (b) the name of the person paying the rent or on whose behalf the rent is paid,
   (c) the address of the residential premises for which the rent is paid,
   (d) the period for which the rent is paid and the date up to which the rent is paid,
   (e) the date on which the rent is paid,
   (f) the amount of rent paid.

4) Landlord who does not provide rent receipts upon payment of rent to the tenant commits an offence.

**Rent Records**

24.  
1) A landlord or landlord’s agent must keep a record of rent received under a residential tenancy agreement (a rent record).

2) A rent record may be kept in any form, and must contain any particulars, prescribed by the Regulations for the purposes of this section.

3) A landlord or landlord’s agent must, within 7 days of a written request by the tenant, provide a written statement setting out the particulars of the rent record for a specified period.

4) This section does not require a landlord or landlord’s agent to provide a written statement for a period to a person if the landlord or agent has previously provided a written statement for the same period to the person.

**Holding Fees**

25.  
1) A person must not require or receive from a tenant or prospective tenant a holding fee unless:
(a) the tenant’s application for tenancy of the residential premises has been approved by the landlord, and
(b) the fee does not exceed 1 week’s rent of the residential premises (based on the rent under the proposed residential tenancy agreement).

2) A person who receives a holding fee must give the tenant a written receipt setting out the following:
   (a) the amount paid and the date on which it was paid, (b) the address of the residential premises,
   (b) the names of the landlord and the tenant.

3) If a tenant has paid a holding fee, the landlord must not enter into a residential tenancy agreement for the residential premises with any other person within 7 days of payment of the fee (or within such further period as may be agreed with the tenant) unless the tenant notifies the landlord that the tenant no longer wishes to enter into the residential tenancy agreement.

4) A holding fee may be retained by the landlord only if the tenant enters into the residential tenancy agreement or refuses to enter into the residential tenancy agreement.

5) Despite subsection (iv), a holding fee must not be retained by the landlord if the tenant refuses to enter into the residential tenancy agreement because of a misrepresentation or failure to disclose a material fact by the landlord or landlord’s agent.

6) If a residential tenancy agreement is entered into after payment of a holding fee, the fee must be paid towards rent.

   **Utility charges payable by Tenant**

26.

1) A tenant must pay the following charges for the residential premises:

   (a) all charges for the supply of electricity, gas (except bottled gas) or oil to the tenant at the residential premises if the premises are separately metered,
   (b) all charges for the supply of bottled gas to the tenant at the residential premises,
   (c) all charges for pumping out a septic system used for the residential premises,
   (d) any excess garbage charges relating to the tenant’s use of the residential premises,
   (e) any other charges prescribed by the regulations

   **Water usage charges payable by tenant**
27.

1) A tenant must pay the water usage charges for the residential premises, but only if:
   (a) the premises are separately metered or the premises are not connected to a water supply service and water is delivered to the premises by vehicle, and
   (b) the premises contain water efficiency measures prescribed by the regulations for the purposes of this section, and
   (c) the charges do not exceed the amount payable by the landlord for water used by the tenant.

2) A tenant is not required to pay the water usage charges unless the landlord gives the tenant a copy of the part of the water supply authority’s bill setting out the charges, or other evidence of the cost of water used by the tenant.

3) A landlord must give the tenant not less than 21 days to pay the water usage charges.

4) A tenant is not required to pay the water usage charges if the landlord fails to request payment from the tenant within 3 months of the issue of the bill for those charges by the water supply authority.

5) Subsection (iv) does not prevent a landlord from taking action to recover an amount of water usage charges later than 3 months after the issue of a bill for those charges, if the landlord first sought payment of the amount within 3 months after the issue of the bill.

6) A landlord must ensure that the tenant receives the benefit of, or an amount equivalent to, any rebate received by the landlord in respect of any water usage charges payable or paid by the tenant.

   Payment of rates, taxes and certain utility charges by landlord

28.

1) A landlord must pay the following charges for the residential premises:

   (a) rates, taxes or charges payable under any Act (other than charges payable by the tenant under this Division),
   (b) the installation costs and charges for initial connection to the residential premises of an electricity, water, gas, bottled gas or oil supply service,
   (c) all charges for the supply of electricity, gas (except bottled gas) or oil to the tenant at the residential premises that are not separately metered,
   (d) the costs and charges for the supply or hire of gas bottles for the supply of bottled gas at the commencement of the tenancy,
(e) all charges (other than water usage charges) in connection with a water supply service to separately metered residential premises,
(f) all charges in connection with a water supply service to residential premises that are not separately metered,
(g) all charges for the supply of sewerage services (other than for pump out septic services) or the supply or use of drainage services to the residential premises,
(h) any other charges prescribed by the regulations

2) Where the tenants are to share the bill payments with the landlord or other tenants, the allocation must be mutually agreed between the parties and form part of the written residential tenancy agreement.

3) The Landlord must not pass the connection fees of the utilities on to the tenant.

4) Landlord must ensure that utility bills accounts are cleared before the tenancy begins.

5) The landlord or the landlord's agent must not impose any mark-up on the regulated water and electricity tariff rates.

6) The landlord or Tenant who disconnects the water or electricity due to any dispute during the occupancy of the tenancy commits an offence.

Rent Increases

29.
1) The rent payable under a residential tenancy agreement may be increased only if the amount of rent increase is approved and Authorized by the Fiji Commerce Commission and:

   (a) the tenant is given a written notice by the landlord or the landlord’s agent specifying the increased rent upon approval from Fiji Commerce Commission and the day from which it is payable, and
   (b) the notice is given at least 60 days before the increased rent is payable.

2) The landlord must first provide a twelve weeks Notice in writing to the Fiji Commerce Commission if seeking to increase rent.

3) The notice to Fiji Commerce Commission must contain the amount of the increased rent with justifications and the day from which the increased rent is to be paid.

4) No rent increases are permitted during the rent freeze periods or during the twelve (12) weeks’ notice period.
5) A rent increase is not payable by a tenant unless the rent is increased in accordance with this section.

6) Notice of a rent increase may be cancelled or varied (so as to reduce the increase) by a subsequent written notice given to the tenant by or on behalf of the landlord. Any such later notice takes effect from the date on which the earlier notice was to take effect.

Rent reductions

30.

1) Reduction in goods, services or facilities
   The tenant may make a written request to the landlord at any time for a reduction in rent if the landlord reduces or withdraws any goods, services or facilities provided with the residential premises, even if those goods, services or facilities are provided under a separate or a previous contract, agreement or arrangement.

2) Premises unusable
   The rent payable under a residential tenancy agreement abates if residential premises under a residential tenancy agreement are:
   (a) otherwise than as a result of a breach of an agreement, destroyed or become wholly or partly uninhabitable, or
   (b) cease to be lawfully usable as a residence, or
   (c) appropriated or acquired by any authority by compulsory process.

3) Access to purchasers
   The landlord and tenant may agree to reduce the rent payable for premises during periods when access to the residential premises is required to be given to prospective purchasers of the premises.

4) Effect of section
   This section does not limit the rights of landlords and tenants to agree to reduce the rent payable under a residential tenancy agreement.

Tenant’s remedies for excessive rent and charges

31.

1) A tenant may, before the end of a tenancy, make an application that the rent is excessive, having regard to the reduction or withdrawal of any goods, services or facilities provided with the residential premises, even if those goods, services or facilities were provided under a separate or a previous contract, agreement or arrangement.
2) The Fiji Commerce Commission may, on the application of a tenant, make any of the following Declaration and Orders:

   (a) a Declaration or Order that a rent increase under an existing or proposed residential tenancy agreement is excessive and that, from a specified day, the rent for residential premises must not exceed a specified amount and the excess rent charged be refunded back to the Tenant within a specified time.

   (b) a Declaration or Order that rent payable under an existing or proposed residential tenancy agreement is excessive, having regard to the reduction or withdrawal by the landlord of any goods, services or facilities provided with the residential premises and that, from a specified day, the rent for residential premises must not exceed a specified amount.

3) A tenant may make a written request to the landlord that the landlord repay to the tenant any rent, or other amounts, paid by the tenant that are not required to be paid under this Act or the residential tenancy agreement.

4) A request must only be made during the tenancy or within three months after the date of termination of a residential tenancy agreement.

5) A landlord must, within 14 days of a written request by a tenant, repay to the tenant the amount of any rent or other amount paid in excess of the amount payable by the tenant under this Act or the residential tenancy agreement.

6) A tenant may apply to the Fiji Commerce Commission for an order for the repayment of rent or any other excess amount paid by the tenant if a written request by the tenant for payment is not complied with by the landlord within 14 days upon Notice being served upon the landlord.

7) The Commission may order that rent or any other amount be repaid to the tenant if it finds that the rent or amount was not required to be paid by the tenant under this Act or the residential tenancy agreement.

8) For the purposes of making an order under this section, the Fiji Commerce Commission may declare that amounts payable under a contract, agreement or arrangement under which goods, services or facilities are provided to the tenant are rent.

9) The Fiji Commerce Commission may have regard to the following in determining whether a rent increase or rent is excessive:
(a) the general market level of rents for comparable premises in the locality or a similar locality,
(b) the landlord’s outgoings under the residential tenancy agreement or proposed agreement,
(c) any fittings, appliances or other goods, services or facilities provided with the residential premises,
(d) the state of repair of the residential premises,
(e) the accommodation and amenities provided in the residential premises,
(f) any work done to the residential premises by or on behalf of the tenant,
(g) when the last increase occurred,
(h) any other matter it considers relevant (other than the income of the tenant or the tenant’s ability to afford the rent increase or rent).

**Division 2 - Occupation and use of residential premises**

**Occupation of residential premises as residence**

**32.**

(1) A landlord must take all reasonable steps to ensure that, at the time of entering into the residential tenancy agreement, there is no legal impediment to the occupation of the residential premises as a residence for the period of the tenancy.

(2) A landlord must ensure that the tenant has vacant possession of any part of the residential premises to which the tenant has a right of exclusive possession on the day on which the tenant is entitled to occupy those premises under the residential tenancy agreement.

(3) This section is a term of every residential tenancy agreement.

**Tenant’s right to quiet enjoyment**

**33.**

(1) A tenant is entitled to quiet enjoyment of the residential premises without interruption by the landlord or any person claiming by, through or under the landlord or having superior title (such as a head landlord) to that of the landlord.

(2) A landlord or landlord’s agent must not interfere with, or cause or permit any interference with, the reasonable peace, comfort or privacy of the tenant in using the residential premises.

(3) A landlord or landlord’s agent must take all reasonable steps to ensure that the landlord’s other neighbouring tenants do not interfere with the reasonable peace,
comfort or privacy of the tenant in using the residential premises.

(4) This section is a term of every residential tenancy agreement.

Use of premises by tenant

34. A tenant must not do any of the following:

(1) use the residential premises, or cause or permit the premises to be used, for any illegal purpose,
(b) cause or permit a nuisance,
(c) interfere, or cause or permit any interference, with the reasonable peace, comfort or privacy of any neighbour of the tenant,
(d) intentionally or negligently cause or permit any damage to the residential premises,
(e) cause or permit a number of persons to reside in the residential premises that exceeds any number specified in the residential tenancy agreement.

(2) A tenant must do the following:

(a) keep the residential premises in a reasonable state of cleanliness, having regard to the condition of the premises at the commencement of the tenancy,

(b) notify the landlord of any damage to the residential premises as soon as practicable after becoming aware of the damage.

(3) On giving vacant possession of the residential premises, the tenant must do the following:

(a) remove all the tenant’s goods from the residential premises,
(b) leave the residential premises as nearly as possible in the same condition, fair wear and tear excepted, and, if there is a condition report, as set out in the condition report applicable to the premises when the agreement was entered into,
(c) leave the residential premises in a reasonable state of cleanliness, having regard to the condition of the premises at the commencement of the tenancy,
(d) remove or arrange for the removal from the residential premises of all rubbish, having regard to the condition of the premises at the commencement of the tenancy,
(e) return to the landlord all keys, and other opening devices or similar devices, provided by the landlord to the tenant.

(4) In this section: residential premises includes everything provided with the residential premises
(whether under the residential tenancy agreement or not) for use by the tenant.

(5) This section is a term of every residential tenancy agreement.

**Landlord’s general obligations for residential premises**

35.

(1) A landlord must provide the residential premises in a reasonable state of cleanliness and fit for habitation by the tenant.

(2) A landlord must not interfere with the supply of gas, electricity, water, telecommunications services or other services to the residential premises unless the interference is necessary to avoid danger to any person or to enable maintenance or repairs to be carried out.

(3) A landlord must comply with the landlord’s statutory obligations relating to the health or safety of the residential premises.

**Sale of residential premises**

36.

(1) A landlord must give the tenant written notice of the landlord’s intention to sell the residential premises not later than 14 days before the premises are first made available for inspection by prospective purchasers.

(2) A landlord or the agent of the landlord for the sale of the residential premises must make all reasonable efforts to agree with the tenant as to the days and times when the residential premises are to be periodically available for inspection by prospective purchasers.

(3) A tenant must not unreasonably refuse to agree to days and times when the residential premises are to be periodically available for inspection by prospective purchasers.

(4) A tenant is not required to agree to the residential premises being available for inspection by prospective purchasers more than twice a week.

(5) This section is a term of every residential tenancy agreement.

**Liability of Tenant for actions of others**

37.

(1) A tenant is vicariously responsible to the landlord for any act or omission by any other person who is lawfully on the residential premises (other than a person who has a right of
entry without the tenant’s consent) that would have been a breach of the residential tenancy agreement if it had been an act or omission by the tenant.

(2) This section is a term of every residential tenancy agreement.

**Division 3 - Landlord’s rights to enter residential premises**

**Entry by Landlord with tenant’s consent**

38.

(1) The landlord, the landlord’s agent or any other person authorised by the landlord may enter the residential premises at any time during the residential tenancy agreement with the consent of the tenant.

(2) This section is a term of every residential tenancy agreement.

**Access by landlord to residential premises without consent**

39.

(1) A landlord, the landlord’s agent or any other person authorised by the landlord may enter residential premises during a residential tenancy agreement without the consent of the tenant, and without giving notice to the tenant, only in the following circumstances:

(a) in an emergency,
(b) to carry out urgent repairs,
(c) if the landlord, landlord’s agent or person has made a reasonable attempt to obtain entry with consent and has reasonable cause for serious concern about the health or safety of the tenant or any other person that the landlord, landlord’s agent or person believes is on the residential premises,
(d) if the landlord forms a reasonable belief that the residential premises have been abandoned,
(e) in accordance with an order of the Commission.

(2) A landlord, the landlord’s agent or any other person authorised by the landlord may enter residential premises during a residential tenancy agreement without the consent of the tenant, after giving notice to the tenant, only in the following circumstances:

(a) to inspect the residential premises, not more than 4 times in any period of 12 months, if the tenant has been given not less than 7 days written notice each time,
(b) to carry out or assess the need for necessary repairs (other than urgent repairs) to, or maintenance of, the residential premises, if the tenant has been given not less than 2 days notice each time,
(c) to carry out, inspect or assess the need for work for the purpose of compliance with the landlord’s statutory obligations relating to the health or safety of the residential premises, if the tenant has been given not less than 2 days notice each time,
(d) to value the property, not more than once in any period of 12 months, if the tenant is given not less than 7 days notice each time,
(e) to show the premises to prospective tenants, a reasonable number of times during the period of 14 days preceding the termination of the agreement, if the tenant is given reasonable notice each time,
(f) if the landlord and tenant fail to agree under section 53 to show the premises to prospective purchasers, not more than twice in any period of a week, if the tenant is given not less than 48 hours notice each time.

(3) This section does not apply to any part of premises to which the tenant does not have the right of exclusive occupation.

(4) This section is a term of every residential tenancy agreement.

**Limits on entry by landlord or others without consent**

40.

(1) A landlord, the landlord’s agent or other person who enters residential premises under a right to enter the premises without the consent of the tenant:
(a) must enter the premises between the hours of 8.00 am and 8.00 pm, and
(b) must not enter on a Sunday or a public holiday, and
(c) must not stay on the residential premises longer than is necessary to achieve the purpose of the entry to the residential premises, and
(d) must, if practicable, notify the tenant of the proposed time and day of entry.

(2) A person authorized by the landlord or landlord’s agent must not enter residential premises under a right to enter the premises without the consent of the tenant unless:
(a) the person first obtains the written consent of the landlord or landlord’s agent, and
(b) the person produces the consent to the tenant if the tenant is at the premises.

(3) This section does not apply to entry:
(a) as agreed with the tenant, or
(b) in an emergency, or
(c) to carry out urgent repairs, or
(d) if the landlord forms a reasonable belief that the premises have been abandoned, or
(e) in accordance with an order of the Commission.
(4) This section is a term of every residential tenancy agreement.

**Duty of tenant to give access to residential premises**

41.  
(1) A tenant must permit a landlord, landlord’s agent or other person exercising a right of access to the residential premises in accordance with this Division to have access to the premises.  
(2) This section is a term of every residential tenancy agreement.

**Landlord must only enter premises in accordance with Division**

42.  
(1) A landlord, the landlord’s agent or other person authorised by the landlord must not enter the residential premises during the residential tenancy agreement, except in accordance with this Division.  
(2) This section is a term of every residential tenancy agreement.

**Landlord’s remedies relating to access to premises**

43.  
(1) The Commission may, on application by a landlord, make any of the following orders:  
(a) an order authorising the landlord or any other person to enter the residential premises for a purpose permitted under this Division,  
(b) an order authorising the landlord or any other person to enter the residential premises for the purposes of showing the residential premises to prospective purchasers on a periodic basis,  
(c) an order authorising the landlord or any other person to enter the residential premises for the purpose of determining whether the tenant has breached a term of the residential tenancy agreement.  
(2) The order may specify the days and times, and purposes for which, entry to the residential premises is authorised.

**Tenant’s remedies relating to access to premises**

44.  
(1) The Commission may, on application by a tenant, make an order specifying or limiting the days and times, and purposes for which, entry to the residential premises by a landlord, landlord’s agent, agent for the sale of the residential premises or other persons is authorised.  
(2) The Commission may, on application by a tenant, order the landlord or the landlord’s
agent to pay compensation to the tenant for damage to or loss of the tenant’s goods caused by any person in the exercise of a power of the landlord or landlord’s agent to enter residential premises under this Act or the residential tenancy agreement.

Part 6  Repairs and Maintenance of Residential Premises

Definitions

45. In this Division:

residential premises includes everything provided with the premises (whether under the residential tenancy agreement or not) for use by the tenant.

urgent repairs means any work needed to repair any one or more of the following:
(a) a burst water service,
(b) an appliance, fitting or fixture that uses water or is used to supply water that is broken or not functioning properly, so that a substantial amount of water is being wasted,
(c) a blocked or broken lavatory system,
(d) a serious roof leak,
(e) a gas leak,
(f) a dangerous electrical fault,
(g) flooding or serious flood damage,
(h) serious storm or fire damage,
(i) a failure or breakdown of the gas, electricity or water supply to the residential premises,
(j) a failure or breakdown of any essential service on the residential premises for hot water, cooking, heating, cooling or laundering,
(k) any fault or damage that causes the residential premises to be unsafe or insecure,
(l) any other damage prescribed by the regulations,
but does not include work needed to repair premises that are owned by a person other than the landlord or a person having superior title (such as a head landlord) to the landlord.

Landlord’s general obligation

46.

(1) A landlord must provide and maintain the residential premises in a reasonable state of repair, having regard to the age of, rent payable for and prospective life of the premises.

(2) A landlord’s obligation to provide and maintain the residential premises in a reasonable state of repair applies even though the tenant had notice of the state of disrepair before entering into occupation of the residential premises.

(3) A landlord is not in breach of the obligation to provide and maintain the residential premises in a reasonable state of repair if the state of disrepair is caused by the tenant’s breach of this Part.
(4) This section is a term of every residential tenancy agreement.

**Urgent repairs to residential premises**

47.

(1) A landlord must, not later than 14 days after being given a written notice from the tenant, reimburse the tenant for the reasonable costs of making urgent repairs to the residential premises.

(2) A landlord is required to reimburse the costs only if:
   (a) the state of disrepair did not result from a breach of the residential tenancy agreement by the tenant, and
   (b) the tenant gave the landlord or the landlord’s agent notice of the state of disrepair or made a reasonable attempt to do so, and
   (c) the tenant gave the landlord or landlord’s agent a reasonable opportunity to make the repairs, if notice was given, and
   (d) the tenant has made a reasonable attempt to arrange for a licensed or otherwise properly qualified person nominated in the residential tenancy agreement to carry out the repairs, if such a person is so nominated, and
   (e) the repairs were carried out, if appropriate, by licensed or otherwise properly qualified persons, and
   (f) as soon as practicable after the repairs were carried out, the tenant gave the landlord or landlord’s agent, or made a reasonable attempt to give the landlord or landlord’s agent, a written notice setting out details of the repairs and the costs of the repairs, together with the receipts or copies of receipts for costs paid by the tenant.

(3) The maximum amount that a tenant is entitled to be reimbursed under this section is $1,000 or such other amount as may be prescribed by the regulations.

(4) Nothing in this section prevents a tenant, with the consent of the landlord, from making repairs to the residential premises and being reimbursed for the costs of those repairs.

(5) This section is a term of every residential tenancy agreement.

**Tenant must not make alterations to premises without consent**

48.

(1) A tenant must not, without the landlord’s written consent or unless the residential tenancy agreement otherwise permits or unless the repair is an urgent repair to which the landlord has had notice but not attending, install or cause to be installed a fixture or make or cause to be made any renovation, alteration or addition to the residential premises.
(2) A landlord must not unreasonably withhold consent to a fixture, or to an alteration, 
addition or renovation that is of a minor nature.

(3) A landlord may withhold consent to any other action by the tenant that is permitted 
under this section whether or not it is reasonable to do so.

(4) A fixture installed by or on behalf of the tenant, or any renovation, alteration or addition 
to the residential premises by or on behalf of the tenant, is to be at the cost of the tenant, 
unless the landlord otherwise agrees.

**Removal of fixtures installed by tenant**

49.

(1) A tenant may, at the tenant’s cost and before the tenant gives vacant possession of the 
residential premises, remove any fixture that was installed by the tenant in accordance 
with this Act or the residential tenancy agreement.

(2) A tenant must notify the landlord of any damage caused by removing a fixture and must 
repair the damage or compensate the landlord for the landlord’s reasonable expenses of 
repairing the damage.

(3) Despite subsection (1), a tenant is not entitled to remove a fixture without the consent of 
the landlord if the fixture was installed at the landlord’s expense or the landlord provided 
the tenant with a benefit equivalent to the cost of the fixture.

**Tenants remedies for repairs or alterations**

50.

(1) The Commission may, on application by a tenant and upon hearing all parties concerned, 
make any of the following orders/ directions:

   (a) an order/ direction that the landlord carry out specified repairs.
   (b) an order/ direction that the landlord reimburse the tenant an amount for urgent repairs 
carried out by the tenant if it is satisfied that the landlord has failed to reimburse the 
tenant for the costs in accordance with this Division

**Orders/ Directions for repairs**

51.

(1) The Commission may make an order or direction that the landlord carry out specified 
repairs only if it determines that the landlord has breached the obligation under this Act 
to maintain the residential premises in a reasonable state of repair, having regard to the 
age of, rent payable for and prospective life of the premises.
(2) The Commission must not determine that a landlord has breached the obligation unless it is satisfied that:

(a) the landlord had notice of the need for the repair or ought reasonably to have known of the need for the repair, and
(b) the landlord failed to act with reasonable diligence to have the repair carried out.

(3) The Commission may, on application by a tenant, make any of the following orders, if the landlord fails to consent:
(a) an order that the tenant may install a fixture or make a renovation, alteration or addition to the residential premises,
(b) an order that the tenant is entitled to remove a fixture installed by the tenant.

(4) The Commission may order that the tenant may install a fixture or make a renovation, alteration or addition to the residential premises only if it is satisfied:
(a) that the landlord’s failure to give consent is unreasonable, and
(b) if the consent is to a renovation, alteration or addition, that it is of a minor nature.

(5) The Commission may determine that a landlord’s failure to consent is reasonable in any of the following circumstances (but is not limited to those circumstances for such a determination):
(a) if the work involves structural changes,
(b) if the work involves work that would not be reasonably capable of rectification, repair or removal,
(c) if the work involves internal or external painting of the residential premises,
(d) if the work is prohibited under any other law,
(e) if the work is not consistent with the nature of the property.

(6) **Payment of rent into Commission**
The Commission may order that all or part of the rent payable under a residential tenancy agreement be paid into the Commission’s Trust Account until an order under this section has been complied with.

**Landlords’ remedies for alterations**

(1) The Commission may, on application by a landlord, make any of the following orders:
(a) an order prohibiting the tenant from removing a fixture,
(b) an order that the tenant compensate the landlord for the cost of rectifying work done by or on behalf of the tenant on the residential premises.

(2) The Commission may make an order under subsection (1) (b) only if the Commission is satisfied that:
(a) the work was not done to a satisfactory standard, or
(b) the work, if not rectified, is likely to adversely affect the landlord’s ability to let the residential premises to other tenants
(c) the work done poses a risk or harm to any of the parties affected by the tenancy
(d) the work done is against the laws of the country

(3) The Commission may make an order that the tenant compensate the landlord for the cost of rectifying work done by or on behalf of the tenant whether or not the landlord consented to the carrying out of the work.

**Locks and other security devices**

53.

(1) A landlord must provide and maintain the locks or other security devices necessary to ensure that the residential premises are reasonably secure.

(2) A landlord or landlord’s agent must give to each tenant named in the residential tenancy agreement a copy of the key or any other opening device or information required to open a lock or security device for the residential premises or common property to which the tenant is entitled to have access.

(3) The initial copies are to be provided free of charge but the landlord may recover from a tenant the cost of providing replacement or additional copies.

**Changes of locks and other security devices**

54.

(1) A landlord or tenant may alter, remove or add or cause or permit the alteration, removal or addition of a lock or other security device for the residential premises only if:
(a) the other party agrees, or
(b) with a reasonable excuse.

(2) Without limiting what is a reasonable excuse, it is a reasonable excuse that a lock or other security device was altered, removed or added:
(a) in an emergency, or
(b) in accordance with an order of the Commission, or
(c) after the tenancy of a co-tenant was terminated, or
(d) after a tenant or occupant of residential premises was prohibited from having access to the residential premises by an apprehended violence order.

(3) If a lock or other security device is altered, removed or added by a landlord or the tenant without the consent of the other party, it is presumed, in the absence of evidence to the contrary, that it was altered, removed or added by the landlord or tenant without reasonable excuse.

(4) A landlord or tenant who contravenes subsection (1) is guilty of an offence and can be fined by the Commission.

(5) This section is a term of every residential tenancy agreement.

Copies of changed locks and other security devices to be given to other party

55.

(1) A copy of the key or any other opening device or information required to open a lock or other security device that is altered, added or removed by a landlord or tenant must be given to the other party not later than 7 days after it is altered, added or removed, unless:

(a) the other party agrees, or
(b) the Commission authorizes a copy not to be given.

(2) This section does not require a copy of a key or other opening device or information to be given to a person who is prohibited from having access to the residential premises by an apprehended violence order.

(3) This section is a term of every residential tenancy agreement.

Remedies for security of residential premises

56.

(1) The Commission may, on application by a landlord or tenant, make any of the following orders/ directions if it thinks it reasonable in the circumstances to do so:

(a) an order authorizing the landlord or tenant to alter, remove or add or cause or permit the alteration, removal or addition of a lock or other security device,
(b) an order authorizing the landlord or tenant to refuse to give to the other party a copy of a key or any other opening device or information,
(c) an order requiring a copy of a key or any other opening device or information to be given to the landlord or tenant
(d) any other order/direction against the landlord or tenant to ensure the security of the residential premises.

PART 7 Changes of Tenancy

Transfer of tenancy or sub-letting by tenant

57.  
(1) A tenant may transfer the tenancy under a residential tenancy agreement to another person or sub-let the premises to another person, if the landlord gives written consent to the transfer or sub-letting.

(2) The landlord must not charge for giving consent to a transfer or sub-letting, other than for the reasonable expenses of giving consent.

Consent to transfer of tenancy or sub-letting

58.  
(1) No requirement for reasonable refusal for whole transfer or sub-letting

The landlord may withhold consent to a transfer or sub-letting relating to the whole tenancy or residential premises whether or not it is reasonable to do so.

(2) Consent must not be unreasonably withheld for partial transfer or sub-letting

The landlord must not unreasonably withhold consent to a transfer of a tenancy or sub-letting of premises if the transfer results only in one or more tenants in addition to an original tenant under the residential tenancy agreement or the partial sub-letting of the residential premises occupied by the tenant.

(3) Without limiting subsection (2), the landlord is entitled to withhold consent if:

(a) the number of proposed occupants is more than the number permitted by the residential tenancy agreement or any applicable consent or approval under the laws of the country,

(b) the proposed occupant/occupants have a previous record of causing nuisance or problems on any residential property

(c) the landlord is reasonably of the opinion that the transfer or sub-letting would result in the residential premises being overcrowded.

(4) Subsections (1)–(3) are terms of every residential tenancy agreement.
(5) The Commission may, on application by a tenant, order that the tenant may transfer a tenancy or sub-let residential premises as referred to in subsection (2) if the Commission finds that the landlord’s failure to consent is unreasonable.

**Notice of sale of residential premises by landlord to remaining tenants**

59.

(1) This section applies if residential premises subject to a tenancy are sold without vacant possession clause.

(2) The landlord, landlord’s agent or other person authorized by the landlord must give the tenant a notice of the sale containing the following:

(a) the name of the purchaser,

(b) a direction that the tenant pay all future rent to the purchaser.

**Recognition of certain persons as tenants**

60.

(1) The Commission may, on application by a person who is occupying residential premises, make an order recognising the person as a tenant under a residential tenancy agreement or join the person as a party to any proceedings relating to the premises, or both.

(2) The Commission may make an order if:

(a) the sole tenant under the residential tenancy agreement to which the premises are subject has died, or

(a) the tenant no longer occupies the premises. (3)

(3) An order under this section may:

(a) vest a tenancy over the residential premises in the occupant on such of the terms of the previous residential tenancy agreement as the Commission thinks appropriate, having regard to the circumstances of the case, and

(b) vest the tenancy from a date that is earlier than the order.

(4) An application for an order under this section may be made at the same time as any other application or during proceedings before the Commission or independently of any such other application or proceedings.

(5) This section does not apply if the landlord is a social housing provider.

**Death of co-tenant**

61.

(1) On the death of a co-tenant leaving one or more other co-tenants under a residential
tenancy agreement, the remaining co-tenants may continue the tenancy or give the landlord a termination notice that has a termination date not earlier than 21 days after the day on which the notice is given.

(2) If a tenancy is continued under this section, the remaining co-tenants are taken to be the only tenants under the residential tenancy agreement on and from the death of the deceased tenant.

(3) This section applies whether or not the fixed term of the residential tenancy agreement has ended if it is a fixed term agreement.

PART 8- Termination Of Residential Tenancy Agreements

Division 1-General

Circumstances of termination of residential tenancies

62.

(1) Termination only as set out in Act
A residential tenancy agreement terminates only in the circumstances set out in this Act.

(2) Termination by notice and vacant possession
A residential tenancy agreement terminates if a landlord or tenant gives a termination notice in accordance with this Act and the tenant gives vacant possession of the residential premises.

(3) Termination by order of the Commission
A residential tenancy agreement terminates if the Commission makes an order terminating the agreement under this Act.

(4) Other legal reasons for termination
A residential tenancy agreement terminates if any of the following occurs:
   a person having superior title (such as a head landlord) to that of the landlord becomes entitled to possession of the residential premises becomes entitled to possession of the premises to the exclusion of the tenant,
   (a) a person who succeeds to the title of the landlord becomes entitled to possession of the residential premises to the exclusion of the tenant,
   (b) the tenant abandons the residential premises,
(c) the tenant gives up possession of the residential premises with the landlord’s consent, whether or not that consent is subsequently withdrawn,
(d) the interests of the landlord and tenant become vested in the one person
(e) (merger),
(f) disclaimer occurs (such as when the tenant’s repudiation of the tenancy is accepted by the landlord)

Termination notices

63.
(1) A termination notice must set out the following matters:

(a) the residential premises concerned,
(b) the day on which the residential tenancy agreement is terminated and by which vacant possession of the premises is to be given,
(c) any other matters prescribed by the regulations.

(2) A termination notice must be in writing and be signed by the party giving the notice or the party’s agent.

(3) The termination notice must specify a termination date that is on or after the end of the fixed term and not earlier than 30 days after the day on which the notice is given.

(4) A termination notice for a periodic agreement may specify a day other than the last day of a period for the payment of rent as the termination date

(5) In the absence of express agreement between the parties, a tenancy of no fixed duration in respect of which the rent is payable weekly, monthly, yearly or for any other recurring period may be terminated by either party giving to the other written notice as follows:

(a) Where the rent is payable yearly or for any recurring period exceeding one year, at least six months ‘notice expiring at the end of any year of the tenancy; or
(b) Where the rent is payable for any recurring period of less than one year, notice for at least a period equal to one rent period under the tenancy and expiring at any time, whether at the end of a rent period or not.

(6) The notice period shall be calculated from the day the Termination Notice had been served on the other party.

(7) The Termination Notice shall be served on the other party by:
(a) by delivering it to the other party (tenant/ landlord) and/or their nominated agent personally

(b) by leaving it at the nominated address shown on the tenancy agreement of the party or by giving the notice with someone who resides at the nominated address as shown in the Tenancy Agreement,

(c) by sending it by registered post to that other party (landlord or tenant) nominated address for service as shown in the agreement

64. Termination orders

(1) If the Commission makes an order terminating a residential tenancy agreement under this Act, it must also make an order for possession of the residential premises specifying the day on which the order takes or took effect.

(2) An application to the Commission by a landlord for a termination order:

(a) must be made after the termination date specified in the relevant termination notice and within the period prescribed by the regulations, and

(b) must be made only if vacant possession of the premises is not given as required by the notice.

65. Withdrawal of termination notices

The party who gives a termination notice may, at any time, revoke the notice with the consent of all other parties to the residential tenancy agreement.

66. Defects in termination notices

The Commission may make a termination order for a residential tenancy agreement or any other order even though there is a defect in the relevant termination notice if:

(a) it thinks it appropriate to do so in the circumstances of the case, and

(b) it is satisfied that the person to whom the notice was given has not suffered any disadvantage because of the defect in the notice or service or that any disadvantage has been overcome by the order and any associated order.
Tenant may vacate at any time before termination date specified by landlord

67.  
(1) A tenant who is given a termination notice by the landlord, or who gives a termination notice, may give vacant possession of the residential premises at any time before the termination date.

(2) If a termination notice is given by a landlord, the tenant is not liable to pay any rent for any period after the tenant gives vacant possession of the residential premises and before the termination date.

(3) Subsection (2) does not affect the liability of a tenant under a fixed term agreement to pay rent in respect of a period after the tenant gives vacant possession of the residential premises and before the end of the fixed term, if the termination notice is given by the landlord in accordance with section 84.

Retaliatory evictions

68.  
(1) The Commission may, on application by a tenant or when considering an application for a termination order or in relation to a termination notice:

(a) declare that a termination notice has no effect, or

(b) refuse to make a termination order, if it is satisfied that a termination notice given or application made by the landlord was a retaliatory notice or a retaliatory application.

(2) The Commission may find that a termination notice is a retaliatory notice or that an application is a retaliatory application if it is satisfied that the landlord was wholly or partly motivated to give the notice or make the application for any of the following reasons:

(a) the tenant had applied or proposed to apply to the Commission for an order,

(b) the tenant had taken or proposed to take any other action to enforce a right of the tenant under the residential tenancy agreement, this Act or any other law,

(c) an order of the Commission was in force in relation to the landlord and tenant.

(3) A tenant may make an application to the Commission for a declaration under this section before the termination date and within the period prescribed by the regulations after the termination notice is given to the tenant.
Accrual of rent on termination

69. The rent payable under a residential tenancy agreement accrues from day to day and on termination the appropriate amount is payable.

Acceptance of rent after termination notice

70. A demand for, any proceedings for the recovery of, or acceptance of, rent payable under a residential tenancy agreement by a landlord does not operate as a waiver of any rights with respect to the breach of the agreement or any termination notice by the landlord on the ground of breach of the agreement.

(2) Any such action by a landlord is not evidence of the creation of a new tenancy.

(3) This section does not apply to a termination notice given solely on the ground of failure to pay rent.

Other notices

71. To avoid doubt, a landlord or tenant who gives a termination notice may:

(a) if the notice is revoked, give a further notice on the same or a different ground, or

(b) if the notice is not revoked, give a further notice on a different ground.

Division 2 – Termination by Parties

End of Residential tenancy agreement at the end of Fixed term Tenancy

72. A landlord or tenant may, at any time before the end of the fixed term of a fixed term agreement, give a termination notice for the agreement that is to take effect on or after the end of the fixed term.

(2) The Commission must, on application by a landlord or tenant, make a termination order if it is satisfied that a termination notice was given in accordance with this section and the tenant has not vacated the premises as required by the notice.

(3) This section does not apply to a residential tenancy agreement if the tenant has been in continual possession of the same residential premises for a period of 20 years or more.
End of Tenancy at end of periodic Agreements

73. (1) A landlord or tenant may, at any time, give a termination notice for a periodic agreement.

(2) The termination notice must specify a termination date that is not earlier than 30 days after the day on which the notice is given.

(3) The Commission must, on application by a landlord or tenant, make a termination order if it is satisfied that a termination notice was given in accordance with this section and the tenant has not vacated the premises as required by the notice.

(4) This section does not apply to a residential tenancy agreement if the tenant has been in continual possession of the same residential premises for a period of 20 years or more.

Sale of premises

74. (1) A landlord may give a termination notice on the ground that the landlord has entered into a contract for the sale of the residential premises under which the landlord is required to give vacant possession of the premises.

(2) The Commission may, on application by a landlord, make a termination order if it is satisfied that:

(a) the landlord has entered into a contract for the sale of the residential premises that is proceeding under which the landlord is required to give vacant possession of the premises, and

(b) a termination notice was given in accordance with this section and the tenant has not vacated the premises as required by the notice.

Breach of agreement

75. (1) A landlord or tenant may give a termination notice on the ground that the other party has breached the residential tenancy agreement.

(2) The Commission may, on application by either party, make a termination order if it is satisfied that:
(a) the party has breached the residential tenancy agreement, and

(b) the breach is, in the circumstances of the case, sufficient to justify termination of the agreement, and

(c) the termination notice was given in accordance with this section and the tenant has not vacated the premises as required by the notice.

(3) In considering the circumstances of the case, the Commission may consider the following inclusive of but not limited to:

(a) the nature of the breach,

(b) any previous breaches,

(c) any steps taken by the tenant to remedy the breach,

(d) any steps taken by the landlord about the breach,

(e) the previous history of the tenancy.

(4) The Commission may refuse to make a termination order or revoke a termination order if it is satisfied that the tenant or landlord has remedied the breach.

Termination notices for non-payment of rent

76. A termination notice given by a landlord on the ground of a breach of the residential tenancy agreement solely arising from failure to pay rent (a non-payment termination notice) has no effect unless the rent has remained unpaid in breach of the agreement for not less than 30 days before the notice is given.

(2) A non-payment termination notice is not ineffective merely because of any failure of the landlord or the landlord’s agent to make a prior formal demand for payment of the rent.

(3) A non-payment termination notice must inform the tenant that the tenant is not required to vacate the residential premises if the tenant pays all the rent owing or enters into, and fully complies with, a repayment plan agreed with the landlord, unless the Commission makes a termination order on the basis that the tenant has frequently failed to pay rent on time.
(4) Despite any other provision of this Part, a landlord may apply to the Commission for a termination order before the termination date specified in a non-payment termination notice. The Commission must not consider any such application until after the termination date.

**Repayment of rent owing following issue of non-payment termination notice**

77.

(1) This section applies if a landlord gives a tenant a non-payment termination notice.

(2) The Commission must not make a termination order on the ground set out in the notice if the tenant pays all the rent owing or enters into, and fully complies with, a repayment plan agreed with the landlord.

(3) A termination of the residential tenancy agreement solely on the ground of non-payment of rent, and any warrant for possession issued as a result of any order for possession, cease to have effect if the tenant pays all the rent owing or enters into, and fully complies with, a repayment plan agreed with the landlord and the tenant has not vacated the residential premises.

(4) The Commission may, on application by a landlord, make a termination order despite subsection (2) or (3) if it is satisfied that the tenant has frequently failed to pay rent owing for the residential premises on or before the day set out in the residential tenancy agreement.

**Serious damage or injury by tenant or other occupant**

78.

(1) The Commission may, on application by a landlord, make a termination order if it is satisfied that the tenant, or any person who although not a tenant is occupying or jointly occupying the residential premises, has intentionally or recklessly caused or permitted:

(a) serious damage to the residential premises or any neighbouring property (including any property available for use by the tenant in common with others), or

(b) injury to the landlord, the landlord’s agent, an employee or contractor of the landlord or the landlord’s agent, or an occupier or person on neighbouring property or premises used in common with the tenant.

(2) The termination order may specify that the order for possession takes effect immediately.
(3) A landlord may make an application under this section without giving the tenant a termination notice.

Use of premises for illegal purposes

79.

(1) The Commission may, on application by a landlord, make a termination order if it is satisfied that the tenant, or any person who although not a tenant is occupying or jointly occupying the residential premises, has intentionally or recklessly caused or permitted:

(a) the use of the residential premises or any property adjoining or adjacent to the premises (including any property that is available for use by the tenant in common with others) for the purposes of the manufacture, sale, cultivation or supply of any prohibited drug within the meaning of the *Prohibited Drugs Act* or

(b) the use of the residential premises for any other unlawful purpose and that the use is sufficient to justify the termination.

(2) In considering whether to make a termination order on the ground specified in subsection (1) (b), the Commission may consider (but is not limited to considering) the following:

(a) the nature of the unlawful use,

(b) any previous unlawful uses,

(c) the previous history of the tenancy.

(3) The termination order may specify that the order for possession takes effect immediately.

(4) A landlord may make an application under this section without giving the tenant a termination notice.

Commission may terminate residential tenancy agreement for threat, abuse, intimidation or harassment

80.

(1) The Commission may, on application by a landlord, make a termination order if it is satisfied that the tenant, or any person who although not a tenant is occupying or jointly occupying the residential premises, has:
(a) seriously or persistently threatened or abused the landlord, the landlord’s agent or any employee or contractor of the landlord or landlord’s agent, or caused or permitted any such threats, abuse or conduct, or

(b) intentionally engaged, or intentionally caused or permitted another person to engage, in conduct in relation to any such person that would be reasonably likely to cause the person to be intimidated or harassed (whether or not any abusive language or threat has been directed towards the person).

(2) The termination order may specify that the order for possession takes effect immediately.

(3) A landlord may make an application under this section without giving the tenant a termination notice.

(4) The Commission may make a termination order under this section that takes effect before the end of the fixed term if the residential tenancy agreement is a fixed term agreement.

**Hardship to landlord or Tenant**

81.

(1) The Commission may, on application by either party, make a termination order if it is satisfied that the party would, in the special circumstances of the case, suffer undue hardship if the residential tenancy agreement were not terminated.

(2) The Commission may, if it thinks fit, also order the landlord to pay compensation to the tenant for the tenant’s loss of the tenancy or order the tenant to pay compensation to the landlord for the loss of tenancy.

(3) The party applying must take all reasonable steps to mitigate the loss and is not entitled to compensation for any loss that could have been reasonably avoided by the tenant.

(4) The party to the tenancy agreement may make an application under this section without giving the other a termination notice.

(5) The Commission may make a termination order under this section that takes effect before the end of the fixed term if the residential tenancy agreement is a fixed term agreement.
Occupants remaining in residential premises

82. (1) This section applies if the tenant under a residential tenancy agreement who occupied or partly occupied the residential premises with another occupant no longer resides in the residential premises and the residential tenancy agreement has been terminated.

(2) The landlord may give any remaining occupant of the residential premises a notice requiring the occupant to give vacant possession of the premises within a period of not less than 30 days.

(3) The Commission may, on application by a landlord, make an order for possession of the residential premises specifying the day on which the order for possession takes effect if it is satisfied that:

(a) notice was given in accordance with this section, and

(b) the occupant has not vacated the premises, and

(c) the tenant no longer resides in the premises.

Early termination without compensation to landlord

83. (1) A tenant may give a termination notice for a fixed term agreement on any of the following grounds:

(a) that the tenant has been offered, and accepted, accommodation in social housing premises,

(b) that the tenant has accepted a place in an aged care facility or requires care in a facility or Home under the Ministry of Social Welfare,

(c) that the landlord has notified the tenant of the landlord’s intention to sell the residential premises

(d) that a co-tenant or occupant or former co-tenant or occupant is prohibited by a final apprehended violence order from having access to the residential premises.

(2) The tenant is not liable to pay any compensation or other additional amount for the early termination of the agreement.
Termination by co-tenant of own tenancy

84. (1) A co-tenant may give a termination notice to the landlord and each other co-tenant if the fixed term of the residential tenancy agreement has ended or the agreement is a periodic agreement.

(2) The termination notice must specify a termination date that is not earlier than 30 days after the day on which the notice is given.

(3) A co-tenant ceases to be a tenant under the residential tenancy agreement on the termination date if the co-tenant gives a termination notice in accordance with this section and vacates the residential premises.

(4) The Commission may, on application by a co-tenant, make a termination order for the residential tenancy agreement if it is satisfied that a termination notice was given by another co-tenant in accordance with this section.

Termination of agreement or co-tenancies by Commission

85. (1) The Commission may, on application by a co-tenant, make any of the following orders:

   (a) an order terminating the tenancy of the co-tenant or another co-tenant under the residential tenancy agreement from a date specified in the order,
   (b) an order terminating the residential tenancy agreement,
   (c) any necessary ancillary orders relating to the residential tenancy agreement or liabilities under that agreement.

(2) The Commission may make an order under this section if it is of the opinion that it is appropriate to do so in the special circumstances of the case.

(3) If the Commission terminates the tenancy of one or more, but not all, of the co-tenants under the residential tenancy agreement, the Commission must, in the order terminating the tenancy, specify the day on which the tenants whose tenancies are terminated must vacate the residential premises.

(4) The Commission must give the landlord notice of an application under this section and the landlord has a right to be heard in the proceedings.
Division 3 Abandonment of residential premises

Abandoned premises

86.  
(1) The Commission may, on application by a landlord, make an order declaring that the tenant abandoned the residential premises on a specified day.

(2) The tenant is taken to have abandoned the residential premises on the specified day.
(3) The landlord may take immediate possession of residential premises that have been abandoned by the tenant if there are no remaining occupants.

(4) In determining whether a tenant has abandoned the residential premises the Commission may consider (but is not limited to considering) the following:

(a) the failure by the tenant to pay rent under the residential tenancy agreement,

(b) any evidence that the tenant no longer resides at the premises,

(c) any failure by the tenant to carry out any obligations relating to the residential premises under the residential tenancy agreement.

Landlord’s remedies on abandonment

87.  
(1) The Commission may, on application by a landlord, order a tenant to pay compensation to the landlord for any loss (including loss of rent) caused by the abandonment of the residential premises by the tenant.

(2) The landlord must take all reasonable steps to mitigate the loss and is not entitled to compensation for any loss that could have been avoided by taking those steps. This subsection does not apply in the case of a fixed term agreement that provides for the payment of a break fee.

(3) The compensation payable by a tenant under this section in respect of a fixed term agreement is the amount of the applicable break fee for the tenancy, if the agreement provides for the payment of a break fee.

(4) The break fee for a fixed term agreement for a fixed term of not more than 3 years is:
(a) an amount equal to 6 weeks rent if less than half of the fixed term had expired when the premises were abandoned, or
(b) an amount equal to 4 weeks rent in any other case.

(5) The **break fee** for a fixed term agreement for a fixed term of more than 3 years is the amount set out in subsection (4) or, if an amount is specified in the agreement, the amount specified. An agreement must not specify a break fee exceeding the amount (if any) specified by the regulations.

(6) The amount of any money paid by a tenant to a landlord on terminating a fixed term agreement before the end of the fixed term or before otherwise abandoning the premises (other than money previously due to the landlord under the residential tenancy agreement) is to be deducted from any amount payable to the landlord under this section.

(7) The termination notice may specify a termination date that is before the end of any fixed term of the residential tenancy agreement if it is a fixed term agreement. This section does not prevent a landlord from obtaining an occupation fee for goods left on the residential premises.

**Division 4 Termination by events**

**Death of Tenant**

88. (1) The landlord or the legal personal representative of the tenant may give a termination notice to the other person.

(2) The termination notice may specify a termination date that is before the end of any fixed term of the residential tenancy agreement if it is a fixed term agreement.

(3) The Commission may, on application by a landlord or the legal personal representative of the deceased tenant, make a termination order if it is satisfied that a termination notice was given in accordance with this section and that vacant possession of the residential premises.

(4) The legal personal representative of a deceased tenant who is given a termination notice by the landlord may give vacant possession of the residential premises at any time before the termination date specified in the termination notice.
(5) The estate of the deceased tenant is not liable to pay any rent for any period after the legal personal representative gives vacant possession of the residential premises and before the termination date.

Agreement frustrated—destruction of, or uninhabitable, premises

89.

(1) This section applies if residential premises under a residential tenancy agreement are, otherwise than as a result of a breach of an agreement, destroyed or become wholly or partly uninhabitable or cease to be lawfully usable as a residence or are appropriated or acquired by any authority by compulsory process.

(2) The landlord or the tenant may give the other party a termination notice.

(3) The termination notice may end the residential tenancy agreement on the date that the notice is given.

(4) The termination notice may specify a termination date that is before the end of the fixed term of the residential tenancy agreement if it is a fixed term agreement.

(5) The Commission may, on application by a landlord or tenant, make a termination order if it is satisfied that a termination notice was given in accordance with this section and that this section applies to the residential premises.

Disputes about termination

90.

(1) A landlord or tenant may apply to the Commission for an order in relation to a dispute about a termination notice.

(2) The Commission may, on application by a landlord or tenant, declare that a termination notice was or was not given in accordance with this Part.

(3) Subsection (2) does not limit any other order the Commission may make on an application under this section.
Part 9  Recovery of possession of premises

Division 1  Recovery of possession

Prohibition on certain recovery proceedings in courts

91.  A landlord or former landlord must not commence proceedings against a tenant or former tenant of the landlord in the Supreme Court, the District Court or the Local Court to obtain recovery of possession of residential premises subject to a residential tenancy agreement.

Repossession of residential premises—offences

92.  (1) A person must not enter residential premises for the purposes of taking possession of those premises before or after the end of a residential tenancy agreement unless:

(a) the person is acting in accordance with a warrant arising out of an order for possession of the Commission or a writ or warrant arising out of a judgment or order of a court, or

(b) the tenant has abandoned the premises or given vacant possession of the premises.

(2) A court that finds an offence under this section proven may, in addition to any other penalty it may impose, order that compensation be paid to the person against whom the offence was committed by the person who committed the offence or on whose behalf the offence was committed.

(3) This section applies to a person who enters residential premises on his or her own behalf or on behalf of another person.

Enforcement of orders for possession

93.  (1) The principal registrar of the Commission may, on the application of a person in whose favour an order for possession was made, issue a warrant for possession of the residential premises concerned if the principal registrar is satisfied that the order or a condition of suspension of the order has not been complied with.

(2) An application for a warrant for possession may be made immediately, if the order for possession so provides, or not more than 30 days after the date by which vacant possession was required or within such further period as the Commission may permit.

(3) Without limiting subsection (2), the Commission may permit an application to be made
within a further period if the delay in making the application is attributable to genuine attempts by the applicant to reach agreement with the tenant for reinstatement of the tenancy.

(4) A warrant for possession is to be in the approved form and must authorise a sheriff’s officer to enter specified residential premises and to give possession to the person specified in the warrant.

**Mortgagee repossessions of rented properties**

94.  
(1) **Application**

This section applies if a residential tenancy agreement is terminated because the mortgagee in respect of the residential premises becomes entitled to possession of premises and the former tenant under that agreement is given notice to vacate the premises by the Sheriff.

(2) **Former tenant may withhold or recoup rent etc**

The former tenant who is holding over after termination of the residential tenancy agreement:

(a) is not, during the period of 30 days following the date on which the tenant is given the notice to vacate, required to pay any rent, fee or other charge to occupy the residential premises, and

(b) if the former tenant has paid any rent in advance for any part of that period, entitled to be repaid the amount of that rent.

(3) **Commission may order repayment to former tenant**

The Commission may, on application by the former tenant, order the repayment to the former tenant of any amount referred to in subsection (2).

(4) **Inspection of residential premises by prospective purchasers**

The mortgagee (or any person acting on behalf of the mortgagee) is, during the period in which the former tenant is holding over after termination of the residential tenancy agreement, entitled to enter the residential premises to show the premises to
prospective purchasers on a reasonable number of occasions, but only if the former tenant:

(a) is given reasonable notice of each such occasion, and

(b) agrees to the date and time of the inspection.

(5) **Mortgagee not prevented from doing certain things**

This section does not prevent the mortgagee from:

(a) taking possession of the residential premises before the date specified in the notice to vacate if the former tenant voluntarily vacates the premises before that date, or

(b) changing (by written notice given to the Sheriff and the former tenant) the date specified in the notice to vacate to a later date, or

(c) entering into a new residential tenancy agreement with the former tenant in respect of the residential premises.

(6) **Relationship with other laws**

This section has effect despite the terms of any court order, contract or other agreement.

**Liability of tenant remaining in possession after termination**

95.

(1) A tenant who fails to comply with an order for possession of the Commission is liable to pay an occupation fee to the landlord for the period the tenant remains in possession of the residential premises after the date the tenant is required to vacate the premises.

(2) The occupation fee payable is an amount equal to the rent that would have been payable for that period if the residential tenancy agreement had not been terminated.

(3) The amount of the occupation fee may be deducted from the rental bond paid by the tenant for the residential premises.

(4) The Commission may, on application by the landlord, order the tenant to pay to the landlord an amount of occupation fee.
Division 2  Goods left on residential premises

Application and interpretation

96.  
(1)  This Division applies to goods, personal documents or rubbish left behind on residential premises by a tenant or an occupant of the premises after vacant possession of the premises is obtained or the premises are abandoned.

(2)  In this Division:

   perishable goods means perishable goods or rubbish to which this Division applies.

   personal document means:

   (a)  a birth certificate, passport or other identity document, or (b)  bank books or other financial statements or documents, or (c)  photographs and other personal memorabilia, or

   (b)  licenses or other documents conferring authorities, rights or qualifications, or

   (c)  any other record, or class of record, prescribed by the regulations for the purposes of this definition.

Disposal notices

97.  
(1)  The landlord or landlord’s agent must give the former tenant notice that the goods will be disposed of after 14  days (in the case of goods other than personal documents) or 90 days (in the case of personal documents) after the day on which the notice is given unless they are first claimed.

(2)  Notice may be given in any of the following ways:

   (a)  in writing in any manner permitted under this Act,

   (b)  by post to the former tenant or the former tenant’s legal personal representative at the last forwarding address known to the landlord,

   (c)  orally in person or by telephoning the former tenant.

(3)  Notice may be given by posting a notice in a prominent position on the residential premises if the landlord is unable (for a period of more than 2 days) to give notice to the
former tenant in a manner set out in subsection (2).

(4) This section does not apply to perishable goods.

**Perishable goods**

98. A landlord or landlord’s agent may remove or otherwise dispose of goods that the landlord or landlord’s agent reasonably believes are perishable goods at any time after vacant possession of the residential premises is given or the residential premises are abandoned.

**Storage of goods**

99. The landlord or landlord’s agent may remove goods from residential premises and store them in a safe place pending disposal or collection of the goods in accordance with this Division.

**Disposal of non-perishable goods (other than personal documents)**

100. (1) The landlord or landlord’s agent may dispose of goods (other than personal documents) in accordance with this section if the former tenant or other person entitled to possession of the goods fails to collect or make arrangements to collect the goods within 14 days of a disposal notice being given in accordance with this Division or within such further period as may be agreed.

(2) The landlord or landlord’s agent may dispose of any such goods by selling them or in any other lawful manner.

(3) The landlord or landlord’s agent must keep a record of goods disposed of under this section.

(4) A landlord or landlord’s agent who sells goods under this section must, if requested to do so by the former tenant or other person entitled to possession of the goods, pay the sale proceeds to the former tenant or other person. The landlord or landlord’s agent may deduct from the proceeds an occupation fee calculated in accordance with section 132 and the reasonable costs of the sale.

(5) This section does not apply to perishable goods.

**Disposal of personal documents**
101.  
(1) The landlord or landlord’s agent may dispose of goods that are personal documents in accordance with this section if the former tenant or other person entitled to possession of the documents fails to collect or make arrangements to collect the documents within 90 days of a disposal notice being given in accordance with this Division or within such further period as may be agreed.

(2) The landlord or landlord’s agent may dispose of personal documents as follows:

(a) by returning them to the authority that issued the documents,

(b) if it is not reasonably practicable to return them to that authority, in any other lawful manner that the landlord or landlord’s agent thinks fit.

(3) The landlord or landlord’s agent must not dispose of personal documents in any manner that results in personal information about a tenant or other person becoming publicly available.

Collection of goods by former tenants or persons entitled to goods

102.  
(1) A person who is entitled to possession of goods may claim the goods at any time before they are disposed of.

(2) The landlord or landlord’s agent must deliver up the goods to a person who claims them if the landlord or landlord’s agent is satisfied that the person is entitled to the goods.

(3) The landlord or landlord’s agent must not require a person who claims goods to pay any amount to obtain them, other than an occupation fee in accordance with this section.

(4) The landlord or landlord’s agent may require a former tenant or person who claims goods to pay an occupation fee for each day the goods are left on the residential premises or stored by or on behalf of the landlord, if the quantity of goods left on the premises by a former tenant or occupant is sufficient to prevent the landlord from renting the premises.

(5) The occupation fee payable under this section:

(a) must not exceed an amount that is equal to the rent that would have been payable under the residential tenancy agreement for each day the goods are left on the premises or stored, and
(b) must not exceed, in total, the amount of rent for 14 days.

(6) The Commission may, on application by a landlord or landlord’s agent, order that a former tenant or person who claims goods pay to the landlord or landlord’s agent an occupation fee of an amount that does not exceed the maximum amount payable under this section.

**Landlord may seek Commission’s direction**

103.

(1) This section applies if the tenant abandons the residential premises or dies.

(2) The Commission may, on application by a landlord, make any one or more of the following orders:

(a) an order authorizing the removal or other disposal of goods,

(b) an order directing that notice of any action or proposed action in relation to goods be given to the former tenant, the legal personal representative of a former tenant or any other person,

(c) an order authorizing the sale of goods,

(d) an order as to the manner of sale of goods,

(e) an order as to the payment of the proceeds of sale of goods,

(f) any ancillary order that the Commission, in the circumstances, thinks appropriate.

(3) A landlord or landlord’s agent must deal with goods in accordance with an order of the Commission under this section and not in accordance with the other provisions of this Division relating to disposal of goods.

(4) This section does not apply to perishable goods.

**Orders by Commission relating to goods**

104.

(1) The Commission may, on application by the former tenant or a person who has an interest in goods, make any of the following orders:
(a) an order requiring the landlord to pay compensation for goods disposed of by the landlord or landlord’s agent otherwise than in accordance with this Division,

(b) an order requiring the landlord to pay compensation for goods damaged after being left on the residential premises and before being claimed by the person entitled to them,

(c) an order that the landlord or landlord’s agent deliver goods into the former tenant’s or other person’s possession,

(d) an order requiring the landlord or landlord’s agent to pay the proceeds of sale, or an amount equivalent to the value of the goods, to the former tenant or person,

(e) any ancillary order that the Commission, in the circumstances, thinks appropriate.

(2) The Commission may also, on an application under this section or by a landlord, order the tenant or other person to pay an occupation fee of not more than 14 days rent.

(3) The Commission may, on application by a former co-tenant, make an order requiring a tenant or co-tenant, or a tenant or co-tenant’s agent, to deliver goods left behind on residential premises by the former co-tenant after the co-tenant vacated the premises (in circumstances where one or more other tenants or co-tenants continue to occupy the premises) into the former co-tenant’s possession.

(4) An application for an order under this section must be made within the period prescribed by the regulations.

### Part 10 Rental bonds

#### Division 1 Preliminary

**Online rental bond service**

105. (1) The Commission may establish an online rental bond service.

(2) An online rental bond service is an online facility or system that may be used for any of the following purposes:
(a) to deposit a rental bond with the Commission,
(b) to make a claim for the payment of a rental bond, (c) to make a payment of an amount of a rental bond,
(c) to give any notice authorised or required under this Part,
(d) to do or facilitate the doing of any other thing authorised or required under this Part.

(3) Use of the online rental bond service is subject to any terms and conditions imposed by the Commission.

(3) A landlord, landlord’s agent or any other person must not require a tenant or another person to use the online rental bond service.

(4) A notice or other document that is authorised or required by this Part, or under a provision of a residential tenancy agreement that relates to the requirements of this Part, may be given or served by a user of the online rental bond service to or on any other user of the online rental bond service by delivering it electronically to an address nominated by the user as an address for service of the notice or other document.

(5) In this section:
user of the online rental bond service means:
(a) the Commission, or
(b) any tenant, landlord or landlord’s agent, or person acting on behalf of a tenant or landlord, who has agreed to use the online rental bond service.

Mortgagee in possession may exercise functions

106. A mortgagee who becomes entitled to possession of residential premises may exercise any functions of a landlord under this Part in respect of the release of a rental bond.

Division 2 Payment and deposit of rental bonds

Payment of bonds

107. (1) A landlord, landlord’s agent or any other person, must not require or receive from a tenant or another person a rental bond of an amount exceeding 4 weeks rent under the residential tenancy agreement for which the bond was paid (as in force when the agreement was entered into).
(2) A landlord, landlord’s agent or any other person must not require from a tenant or another person an amount of rental bond before the tenant signs the residential tenancy agreement.

(3) Subsection (2) does not prevent a landlord, landlord’s agent or other person from requiring a tenant or other person who has agreed to deposit a rental bond for a residential tenancy agreement with the Commission to provide evidence that the rental bond has been so deposited before the residential tenancy agreement is entered into.

(4) A person who receives payment of a rental bond must provide the tenant, or person paying the bond, with a receipt for the bond but is not required to do so if details of the payment are recorded in the residential tenancy agreement.

(5) A person who contravenes this section is guilty of an offence.

Other security may not be required

108.
A landlord, landlord’s agent or any other person must not require or receive from a tenant or another person anything other than a rental bond as security for any failure by a tenant to comply with the terms of a residential tenancy agreement.

One rental bond for each agreement

109.
(1) A landlord, landlord’s agent or any other person must not require or receive more than one rental bond for a residential tenancy agreement.

(2) A landlord, landlord’s agent or any other person must not require or receive from a tenant or another person a rental bond or additional amounts of rental bond if:

(a) a rental bond was paid (and not claimed) for residential premises under a residential tenancy agreement, and

(b) one or more of the tenants under that agreement continue to occupy the residential premises under one or more successive residential tenancy agreements.

Deposit of rental bonds

110.
(1) A landlord, landlord’s agent or other person who receives an amount of rental bond must deposit that amount with the Commission within the deposit period together with a notice in the approved form.
(2) A rental bond may, if the landlord and tenant agree, be paid by installments commencing on the signing of the residential tenancy agreement.

(3) The deposit periods for a rental bond (other than a bond paid by installments) are as follows:

   (a) for a bond paid to a landlord or person other than a landlord’s agent—10 working days after the bond is paid or such other period as may be prescribed by the regulations,

   (b) for a bond paid to a landlord’s agent—10 working days after the end of the month in which the bond is paid or such other period as may be prescribed by the regulations.

(4) The deposit periods for a rental bond paid by installments are as follows:

   (a) if the total amount of the bond is paid within 3 months of the first installments being paid—10 working days after the total bond is paid,

   (b) if the total amount is not paid within 3 months of the first installment being paid, for any installments paid within that period—3 months after the first installment is paid or 10 working days after each installment is paid (whichever occurs later),

   (c) if one or more installments are paid after 3 months of the first installment being paid—every 3 months until the bond is fully paid.

(5) A person who contravenes this section is guilty of an offence.

(6) This section does not apply if:

   (a) the rental bond is refunded or becomes refundable, or

   (b) the rental bond becomes the subject of proceedings before the Commission or a court in relation to a residential tenancy agreement.

Division 3 Release of rental bonds

Claims for rental bonds
(1) A claim may be made to the Commission for the payment of a rental bond by:

(a) the tenant or an agent of the tenant, or

(b) the landlord or an agent of the landlord, or

(c) jointly by the landlord and the tenant or agents for them. (2) A claim is to be made in the approved form.

(2) A claim must not be made before the termination of a residential tenancy agreement unless:

(a) it is made jointly by or on behalf of the landlord and all the tenants, or

(b) it is made by or on behalf of the landlord and directs that the rental bond be paid to all the tenants, or

(c) it is made by or on behalf of all the tenants and directs that the rental bond be paid to the landlord.

Claim notice to be given to other party

112. This section applies if a claim for the whole or part of a rental bond is made by a landlord or a tenant without the consent of all the other parties to a residential tenancy agreement.

(2) The Commission must give written notice of the claim to all of the other parties to the residential tenancy agreement as known to the Director-General.

(3) A notice under this section may be addressed to one or more parties to the residential tenancy agreement.

(4) The notice must also be given to the Secretary of the Department of Family and Community Services if the whole or part of the rental bond was paid by or on behalf of that Department.

(5) The notice must state that the Commission will pay the claim unless notified in writing by
a party within 14 days that the claim is the subject of proceedings before the Commission or a court.

**Notice to tenants of claims against tenants**

113.  
(1) A landlord, landlord’s agent or a person on behalf of a landlord who makes a claim for payment of a rental bond without the consent of the tenant must give the tenant:

(a) a copy of a completed condition report about the residential premises at the end of the residential tenancy agreement, and

(b) copies of any estimates, quotes, invoices or receipts for work for which the rental bond is claimed.

(2) The documents must be provided within 7 days of the claim being made.

(3) A person who, without reasonable excuse, contravenes this section is guilty of an offence.

**Matters that may be subject of rental bond claim**

114.  
(1) A landlord is entitled to claim from the rental bond for the residential tenancy agreement any of the following:

(a) the reasonable cost of repairs to, or the restoration of, the residential premises or goods leased with the premises, as a result of damage (other than fair wear and tear) caused by the tenant, an occupant or an invitee of the tenant,

(b) any rent or other charges owing and payable under the residential tenancy agreement or this Act,

(c) the reasonable cost of cleaning any part of the premises not left reasonably clean by the tenant, having regard to the condition of the premises at the commencement of the tenancy,

(d) the reasonable cost of replacing locks or other security devices altered, removed or added by the tenant without the consent of the landlord,

(e) any other amounts prescribed by the regulations.
(2) This section does not limit the matters for which the landlord may claim from the rental bond for a residential tenancy agreement.

**Payment where no dispute**

115.

The Commission must pay the amount of a claim for rental bond if:

(a) the justified claim is made jointly by or on behalf of the landlord and tenant, or

(b) the justified claim is made by or on behalf of the landlord and directs the payment of an amount to the tenant, or

(c) the justified claim is made by or on behalf of a tenant and directs the payment of an amount to the landlord, or

(d) the claim is made by or on behalf of the landlord or the tenant for payment to the party by or on whose behalf the claim is made and the Commission or another party to the agreement fails to notify the Commission of a dispute within the claim notice period.

**Disputed rental bond claims**

116.

(1) This section applies if the Commission is notified in writing within the claim notice period or before payment of a claim for a rental bond that a claim for the payment of an amount of rental bond is the subject of proceedings before the Commission or a court.

(2) The Commission may pay the claim only in the following circumstances:

(a) if the party who disputes the claim gives the Commission written notice of the party’s consent to payment of the claim,

(b) in accordance with an order of the Commission or court,

(c) if any applicable order of the Commission or any Court has been satisfied,

(d) if the proceedings are withdrawn.

(3) If any applicable order of the Commission or a court has been wholly or partly satisfied before a claim for an amount of rental bond is paid, any amount of rental bond no longer required to satisfy the order must be paid to the party who would, but for the
claim, be entitled to the amount.

(4) The Commission must not pay an amount of a claim until proceedings affecting the claim are finally determined if, before any amount is paid, the Commission is given written notice of an appeal against a relevant decision of the Commission or a court.

(5) A payment by the Commission of an amount under this section in accordance with an order of the Commission or a court is for all purposes taken to be a payment by the person subject to the order.

Appeals may be made despite payment

A person may appeal against a decision of the Commission or a court affecting the payment of an amount of rental bond even though the Commission has paid an amount of rental bond under this Division.

Payment to other persons

The Commission may, if directed to do so by a person to whom a rental bond is payable, or under a Court Order pay the whole or part of an amount of the rental bond to another person.

Commission not required to pay excess amount

The Commission is not required to pay an amount of rental bond under this Division to the extent that the amount claimed exceeds the amount of rental bond held by the Commission for the particular residential tenancy agreement.

No Payment of interest by Commission on rental bond amounts

No interest is payable on an amount of rental bond.

Repayment of bond to former co-tenant

(1) This section applies if the tenancy of a co-tenant is terminated and the residential tenancy agreement continues in force in relation to one or more other co-tenants.

(2) The remaining co-tenant or co-tenants must, within 14 days of a request by a former co-tenant, pay to the former co-tenant an amount equal to the rental bond (if any) paid by the former co-tenant for the residential tenancy agreement.
(3) The remaining co-tenant or co-tenants may deduct from that amount any amount owed to them by the former co-tenant for rent or other reasonable costs associated with the residential premises.

(4) If a final apprehended violence order is in force prohibiting a former co-tenant from having access to the residential premises, the remaining tenant or tenants are not required to pay the amount referred to in subsection (2) within the period required by that subsection.

(5) A former co-tenant who is paid an amount in accordance with this section is not entitled to payment of any other amount of rental bond for the residential tenancy agreement.

(6) This section does not apply if the liabilities of the former co-tenant under the residential tenancy agreement exceed the amount of rental bond paid by the former co-tenant.

Proof of deposit of bond

122. A certificate purporting to be a certificate given by the Commission stating that no rental bond has been deposited with, or that no rental bond was or is held on deposit by, the Commission in relation to a tenancy of specified residential premises during a specified period is admissible in any proceedings and is evidence of the matters stated, in the absence of evidence to the contrary.

Division 4 Rental Bond Board

Constitution of Rental Bond Board

123. (1) There is constituted by this Act a corporation with the name Rental Bond Board.

(2) The Board is subject to the direction and control of the Minister of Finance in the exercise of its functions.

(3) The Board has the functions conferred or imposed on it by or under this or any other Act.
(4) The Board is, for the purposes of any Act, a Fiji Government agency.

Members of Rental Bond Board

124. (1) The Board is to consist of the following 6 members:
   (a) two members from the Commission Board
   (b) the Permanent Secretary for Ministry of Information and Trade
   (c) the Permanent Secretary for Ministry of Finance
   (d) the Permanent Secretary for Ministry of Local Government, Urban Development and Housing
   (e) the Chief Executive Officer / Registrar of the Real Estate Licensing Board
   (f) one member appointed by the Prime Minister who have, in the opinion of the Minister, experience in real estate or tenancy matters.

(2) The Permanent Secretary for Finance is to be the Chairperson of the Board.

(3) Schedule 1 contains provisions about the membership and procedures of the Board.

Delegation

125. (1) The Board may delegate to an authorised person any of its functions, other than this power of delegation.

   authorized person means:

   (a) the Chief Executive Officer of the Fiji Commerce Commission, or

   (b) a person, or a person of a class, prescribed by the regulations make an order as to the payment of the amount of the rental bond.

Division 5 Functions of Board relating to residential accommodation

Joint ventures for residential accommodation
126. The Board may, with the approval of the Minister and the concurrence of the Treasurer, enter into a joint venture (including a partnership and any other association) with other persons or bodies, whether or not incorporated.

(2) The joint venture is to be for the purpose of the development (including the acquisition, management, leasing and disposal) of land for or in connection with the provision of residential accommodation.

Joint venture powers

127. The Board may, for the purposes of such a joint venture, with the approval of the Minister:

(a) form, or participate in the formation of, a private corporation, and

(b) purchase, hold, dispose of or deal with shares in, or subscribe to the issue of shares by, any private corporation, and

(c) make advances of money or provide other financial accommodation to any person or body (whether or not incorporated) participating in the joint venture or acting for or on behalf of the joint venture, and

(d) do any other things that are necessary or convenient for, or incidental to, the joint venture.

(2) A corporation in which the Board has a controlling interest because of its shareholding in the capital of the company is not and does not represent the Crown.

Investment in residential accommodation unit trusts

128. The Board may invest money in units in a residential accommodation unit trust and may, with the approval of the Minister, underwrite the issue of units in such a trust.

(2) A residential accommodation unit trust is a unit trust providing for participation by unit holders in income and profits arising from the development of property that wholly or partly comprises residential accommodation.

(3) Development of property includes the acquisition, holding, management, leasing and disposal of property.
Guarantees etc by Board

129. The Board may, with the approval of the Minister:

(a) the provision of residential accommodation, and guarantee the due performance of an obligation incurred by a person or body in connection with a scheme for

(b) make good a loss incurred by a person or body in connection with a scheme for the provision of residential accommodation, and

(c) indemnify a person or body against a liability incurred under a guarantee (provided by the person or body) of the kind which the Board could provide under this section, and

(d) enter into and give effect to an agreement to do anything which the Board is authorized to do under this section.

130. The following examples of schemes for the provision of accommodation:

(a) a joint venture that the Board enters into under this Division,

(b) a residential accommodation unit trust in which the Board is empowered to invest under this Division.

(3) A permissible method of making good a loss involving such a residential accommodation unit trust is investment in units in the trust.

Finance

130. Amounts may be paid from the Rental Bond Interest Account to meet expenditure by the Board under this Division.

(2) Amounts may also be paid from the Rental Bond Account to meet so much of that expenditure as is attributable to the provision of financial accommodation (including advances).
Rental Bond Account

131.  There is to be established a Rental Bond Account into which is to be paid:

   (a) all rental bonds paid to the Commission, and

   (b) any other money payable to the Account under this or any other Act.

(2) There is to be paid from the Rental Bond Account:

   (a) the amount of any rental bonds payable under this Act, and

   (b) money for the purpose of investment of the Account, and

   (c) any other money that is payable from the Account under this or any other Act.

Rental Bond Interest Account

132.  There is to be established a Rental Bond Interest Account into which is to be paid: (a) all income from any investment of the Rental Bond Account, and

   (a) the income from any investment of the Rental Bond Interest Account, and

   (b) any other money payable to the Rental Bond Interest Account under this or any other Act.

(2) There is to be paid from the Rental Bond Interest Account:

   (a) money for the purpose of investment of the Rental Bond Interest Account, and

   (b) the costs of, or expenses incurred in, administering this Act, and

   (c) grants or loans for the purposes set out in subsection (3), and

   (d) any other money that is payable from the Rental Bond Interest Account or the

   (e) Rental Bond Account under this or any other Act.

(3) The Commission may make a grant or loan, on the recommendation of the Board and with
the approval of the Minister, from the Rental Bond Interest Account for the following purposes:
(a) schemes for the provision of residential accommodation,
(b) education about tenancy laws and the rights and obligations of landlords and tenants,
(c) research into matters relevant to the relationship of landlord and tenant,
(d) other activities for the benefit of landlords and tenants.

Part 11   Powers of Commission under the Act

Division 1   General powers of Commission

Orders that may be made by Commission

133. The Commission may, on application by a landlord or tenant or other person under this Act, or in any proceedings under this Act, make one or more of the following orders:

(a) an order that restrain any action in breach of a residential tenancy agreement,

(b) an order that requires an action in performance of a residential tenancy agreement,

(c) an order for the payment of an amount of money, (d) an order as to compensation,

(d) an order that a party to a residential tenancy agreement perform such work or take such other steps as the order specifies to remedy a breach of the agreement,

(e) an order that requires payment of part or all of the rent payable under a residential tenancy agreement to the Commission until the whole or part of the agreement has been performed or any application for compensation has been determined,

(f) an order that requires rent paid to the Commission to be paid towards the cost of remediing a breach of the residential tenancy agreement or towards the amount of any compensation,

(g) an order directing a landlord, landlord’s agent or tenant to comply with a requirement of this Act or the regulations,

(h) a termination order or an order for the possession of premises,
(i) an order directing a landlord or landlord’s agent to give a former tenant or person authorised by a former tenant access to residential premises for the purpose of recovering goods of the former tenant or fixtures that the former tenant is entitled to remove.

(j) an order directing the landlord to refund any excess rent paid / unlawfully charged or increased without approval

(2) Without limiting the Commission’s power to make an order as to compensation, the Commission may order compensation to be paid for the following:

(a) loss of rent,

(b) any other breach of a residential tenancy agreement,

(c) loss or damage suffered by a person as a result of inaccurate, ambiguous or out-of-date information being listed about the person on a residential tenancy database.

(3) An order under subsection (1) (a) or (b) may be made even though it provides a remedy in the nature of an injunction or order for specific performance in circumstances in which such a remedy would not otherwise be available.

(4) The Commission must not make an order for:

(a) the payment of an amount that exceeds the amount (if any) prescribed by the regulations for the purposes of this section, or

(b) the performance of work or the taking of steps the cost of which is likely to or will exceed the amount (if any) prescribed by the regulations for the purposes of this section.

(5) The Commission may, in any proceedings before it under this Act, make any one or more of the following orders:

(a) an order that the Commission may make under this Act,

(b) an order that varies or sets aside, or stays or suspends the operation of, any order made in proceedings or earlier proceedings,

(c) any ancillary order the Commission thinks appropriate,
(d) an interim order.

Application of provisions relating to Commission

134. (1) A provision of this Act that enables a landlord or tenant to apply for an order by the Commission and the Commission to make an order also applies, where appropriate, to a former landlord or a former tenant.

Division 2  Powers of Commission relating to breaches of residential tenancy agreements

Applications relating to breaches of residential tenancy agreements

135. (1) A landlord or a tenant may apply to the Commission for an order in relation to a breach of a residential tenancy agreement within the period prescribed by the regulations after the landlord or tenant becomes aware of the breach or within such other period as may be prescribed by the regulations.

(2) An application may be made:

(a) during or after the end of a residential tenancy agreement, and

(b) whether or not a termination notice has been given or a termination order made.

(3) A landlord’s agent may make an application on behalf of a landlord.

Matters for consideration by Commission in applications relating to security breaches

136. (1) For the purposes of determining whether a landlord has provided residential premises that are reasonably secure, the Commission may consider (but is not limited to considering) the following matters:

(a) the physical characteristics of the premises and adjoining areas,
the requirements of insurance companies for allowing the tenant to obtain insurance for property of the tenant kept at the premises,

c) the likelihood of break-ins or unlawful entry or risks to the tenant’s personal safety.

(2) For the purposes of determining whether compensation is payable to a tenant for a breach of the obligation to provide residential premises that are reasonably secure, the Commission must consider (but is not limited to considering) the actions taken, or that should reasonably have been taken, by the tenant and the landlord for the security of the premises.

Part 12 - Enforcement

Division 1

Powers of officers of the Commission under this Act

Powers of entry and other powers

137. (1) An authorized officer of the Commission may exercise the powers conferred by this section for the purposes of:

(a) investigating whether the provisions of this Act or the regulations are being complied with, or

(b) obtaining evidence, documents or information in relation to a matter that constitutes or may constitute a contravention of this Act or the regulations.

(2) An authorized officer of the Commission may enter any premises at any reasonable time between 7.00 a.m. to 6.00 p.m. and may inspect and do any one or more of the following:

(a) require any person on those premises to produce any documents in the possession or under the control of the person in written form and inspect those documents,
(b) take copies of or extracts from, or make notes from, any such documents and, for that purpose, take temporary possession of any such documents,

(c) take such photographs, films and audio, video and other recordings as the officer of the Commission considers necessary,

(d) require any person on those premises to answer questions or otherwise furnish information in relation to a contravention of this Act or the regulations,

(e) require the owner or occupier of those premises to provide the officer of the Commission with such assistance and facilities as are reasonably necessary to enable the officer of the Commission to exercise the functions of an officer of the Commission under this Division.

(3) An officer of the Commission is not entitled to enter a part of premises used for residential purposes except:

(a) with the consent of the occupier, or

(b) under the authority of a search warrant.

(4) An authorized officer of the Commission may not exercise in any premises a function conferred by this Division unless the officer produces a certificate of identification to the person apparently in charge of those premises or apparently in charge of any work being performed on those premises.

(5) In this Part an authorized officer means an officer employed by Fiji Commerce Commission who has been delegated the authority to conduct inspections on residential properties or exercise any function under this Act.

**Power of an authorized officer to obtain information, documents and evidence**

138. If an officer of the Commission believes on reasonable grounds that a person is capable of giving information, producing documents, or giving evidence in relation to a matter that constitutes, or may constitute, an offence under this Act or the regulations, the officer may, by written Notice to Furnish given to the person, require the person:
(a) to provide the officer, by writing signed by the person (or, in the case of a corporation, by a competent officer of the corporation) and given to the officer within the time and in the manner specified in the notice, with any such information, or

(b) to produce to the Commission, in accordance with the notice, any such documents, or

(c) to appear before the Commission at a time and place specified in the notice and give any such evidence, either orally or in writing, and produce any such documents.

**Obstruction of Officer of the Commission**

**139.**

(1) A person must not:

(a) without reasonable excuse, refuse or fail to comply with any notice given or requirement made, or to answer any question asked, by an officer of the Commission under this Division, or

(b) provide information or give evidence in purported compliance with a requirement made or question asked by an officer of the Commission under this Division knowing the information or evidence to be false or misleading in a material particular, or

(c) willfully delay, hinder or obstruct an officer of the Commission in the exercise of the investigator’s functions under this Division.

(2) Despite any other provision of this Division, a natural person is excused from answering any question, providing any information, giving evidence or producing or permitting the inspection of a document in accordance with this Division on the ground that the answer, information, evidence or document may tend to incriminate the person.

**Taking possession of documents to be used as evidence**

**140.**

(1) If an officer of the Commission takes possession of any documents under this Division for the purpose of obtaining evidence or protecting evidence from destruction, they may be retained by the officer of the Commission until the completion of proceedings (including proceedings on appeal) in which they may be evidence.

(2) The person from whom the documents are taken must be provided, within a reasonable time after the documents are taken, with a copy of the documents certified by an officer of the Commission as a true copy.
Search warrants

141.
(1) An officer of the Commission may apply to a Justice of Peace or a Magistrate or a Judge for the issue of a search warrant for premises if the officer of the Commission believes on reasonable grounds:

(a) that a provision of this Act or the regulations is being or has been contravened on the premises, or

(b) that there is on the premises evidence of a contravention of this Act or the regulations.

(2) A Justice of Peace or a magistrate or a Judge to whom an application for a search warrant is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an officer of the Commission named in the warrant, and any other person named in the warrant:

(a) to enter the premises concerned, and

(b) to search the premises for evidence of a contravention of this Act or the regulations.

Application of the Commerce Commission Decree 2010

142.
The powers conferred on an officer of the Commission under this Act are in addition to any powers conferred on an officer of the Commission under the Commerce Commission Decree 2010.

Division 2 Offences

Nature of proceedings for offences

143.
(1) Proceedings for an offence under this Act or the regulations shall be first dealt with summarily by the Commission as authorized forum for mediation, seeking a remedy or dealing with any dispute or breach arising under this Act.

(2) The Commission shall set its own procedures and rules when dealing with any allegation of a breach of any of the terms under this Act or in relation to resolution of disputes.

(3) A person not satisfied with the order or direction made by the Commission shall have the
right to appeal to a magistrates Court within 21 days of the Commission’s order or direction.

(4) The maximum monetary penalty or fine that may be imposed by Fiji Commerce Commission for breach of provisions of this Act is $ 25,000.00.

(5) Proceedings for an offence against this Act may be brought:

(a) in the case of an offence in relation to a rental bond for a residential tenancy agreement or a proposed residential tenancy agreement—within the period of 1 year that next succeeds:
   i. the commission of the offence, or
   ii. the termination of the residential tenancy agreement, whichever is the later, or

(b) in any other case—within the period of 1 year that next succeeds the commission of the offence, or

(c) with the consent of the Attorney General—at any time.

Penalties that can be imposed

144.  
(1) The Commission has the power to impose fines as specified under this Act on any person for breaching any of the provisions of this Act.

(2) The Commission can make any orders or directions in relation to a breach of any of the provision of this Act or as is authorized by this Act.

(3) The Commission can cause a charge to be filed against an offender breaching the provisions of this Act and institute criminal proceedings in a magistrates court.

(4) The Commission must not institute criminal proceedings against a person who has fully paid a fine imposed for the same facts and complaint.

Penalty notices

145.  
(1) An authorized officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act or the regulations,
being an offence prescribed by the regulations as a penalty notice offence.

(2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by the Commission or any court of law, the person can pay, within the time and to the person specified in the notice, the amount of the penalty prescribed by the regulations for the offence if dealt with under this section.

(3) A penalty notice may be served personally or by post.

(4) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.

(5) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.

**Offences by corporations**

146.

(1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

(2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or has been convicted under the provision.

(3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation under this Act or the regulations.

**Aiding and abetting etc**

147.

A person who:

(a) aids, abets, counsels or procures, or

(b) induces, or attempts to induce, whether by threats or promises or otherwise, or
(c) is in any way, directly or indirectly, knowingly concerned in, or party to, the commission of an offence against this Act or the regulations is taken to have committed that offence and is punishable accordingly.

Division 3  Mandatory appointment of agents for landlords

Appointment of landlord’s agents

148.  (1) The Commission may, by written notice given to a landlord:

(a) direct the landlord to appoint, at the landlord’s expense, a landlord’s agent to manage a tenancy under a residential tenancy agreement between the landlord and a specified person, and

(b) direct that the landlord’s affairs in relation to the tenancy be conducted through the agent.

(2) A notice may specify the period within which an appointment is to be made, the minimum period for which the appointment is to be made and persons who must not be appointed by the landlord.

(3) A landlord’s agent who is appointed by a landlord who has been given a direction must give written notice to the Commission and the tenant:

(a) of the appointment, and

(b) if the person ceases to be the landlord’s agent.

(4) The Commission must not give a direction under this section unless the Commission is satisfied that the landlord has engaged in persistent or serious breaches of this Act, the regulations or residential tenancy agreements (whether or not in relation to the residential premises affected by the direction).

(5) The Commission must not give a direction under this section if the landlord has appointed a landlord’s agent.

(6) The Commission may, by further written notice given to the landlord, revoke or vary a direction given under this section.
(7) A landlord must not, without reasonable excuse, fail to comply with a direction under this section.

Division 4 Costs in certain court proceedings

149. If a court in any proceedings is of the opinion that, having regard to the subject-matter of the proceedings, the taking of the proceedings was not warranted in the circumstances of the case because this Act makes adequate provision for the enforcement by the Commission of the rights concerned, the court, unless it is of the opinion that it would be unjust to do so, must order the plaintiff to pay the defendant’s costs in such amount as the court determines.

Part 13 Residential tenancy databases

Division 1 Application of Part

150. This Part does not apply to a residential tenancy database kept by an entity (including a government department) for use only by that entity or its staff.

Division 2 Tenancy database information

151. (1) This section applies if:

(a) a person (the applicant) applies to a landlord, whether or not through an agent of the landlord, to enter into a residential tenancy agreement, and

(b) the landlord or, if the application is made through an agent, the agent uses a residential tenancy database in deciding whether a residential tenancy agreement should be entered into with the person.
(2) If personal information about the applicant is in the database, the landlord or agent must, as soon as possible but within 7 days after using the database, give the applicant a written notice stating:

(a) that personal information about the applicant is in the database, and

(b) particulars of the landlord or agent who listed the personal information in the database and information about the right to seek a copy of the information from that person, and

(c) how the applicant may contact the database operator that operates the residential tenancy database and obtain information from the operator, and

(d) how and in what circumstances the applicant can have the information removed or amended under this Part.

Listing can be made only for particular breaches by particular persons

152.

A landlord or agent of a landlord must not list personal information about a person in a residential tenancy database unless:

(a) the person was named as a tenant in a residential tenancy agreement that has terminated or the person’s co-tenancy was terminated, and

(b) the person breached the agreement, and

(c) because of the breach, the person owes the landlord an amount that is more than the rental bond for the agreement or the Commission has made a termination order, and

(d) the personal information identifies the nature of the breach and is accurate, complete and unambiguous.

Further restriction on listing

153.

(1) A landlord or agent of a landlord must not list personal information about a person in a residential tenancy database unless:

(a) the landlord or agent has given the person a copy of the personal information or taken other reasonable steps to disclose the personal information to the person, and
(b) the landlord or agent has given the person not less than 14 days to review the personal information and make submissions objecting to its entry into the database or about its accuracy, completeness and clarity, and

(c) the landlord or agent has considered any submissions made. Maximum penalty: 20 penalty units.

(2) This section does not apply if the landlord or agent cannot locate the person after making reasonable inquiries.

(3) A database operator must not list personal information about a person in a residential tenancy database except at the request of a landlord or landlord’s agent in accordance with this Part. Maximum penalty: 20 penalty units.

Ensuring quality of listing—landlord’s and agent’s obligation

154.

(1) This section applies if a landlord or agent of a landlord who lists personal information in a residential tenancy database becomes aware that the information is inaccurate, incomplete, ambiguous or out-of-date.

(2) The landlord or agent must, within 7 days, give written notice of the following to the database operator that keeps the database:

(a) that the information is inaccurate, incomplete, ambiguous or out-of-date,

(b) if the information is inaccurate, incomplete or ambiguous—how the information must be amended to make it accurate, complete and unambiguous,

(c) if the information is out-of-date—that the information is out-of-date and must be removed.

(3) The landlord or agent is taken to have complied with subsection (2) if the landlord or agent corrects the database within 7 days.

Ensuring quality of listing—database operator’s obligation

155.

(1) This section applies if a landlord or agent of a landlord who has listed personal information about a person in a residential tenancy database gives the database
operator that operates the database written notice that the personal information must be:

(a) amended in a stated way to make it accurate, complete and unambiguous, or

(b) removed.

(2) The database operator must amend the personal information in the stated way, or remove the personal information, within 14 days of the notice being given.

Provision of copies of listed personal information

156.

(1) A landlord or agent of a landlord who lists personal information about a person in a residential tenancy database must, if asked in writing by the person, give the person a copy of the information, without payment of a fee, within 14 days after the request is made.

Maximum penalty: 20 penalty units.

(2) A database operator must, if asked in writing by a person whose personal information is in the residential tenancy database kept by the operator, give the person a copy of the information within 14 days after the request is made.

Maximum penalty: 20 penalty units.

(3) If a database operator charges a fee for giving personal information under subsection (2):

(a) the fee must not be excessive, and

(b) subsection (2) applies only if the fee has been paid.

(4) This section does not require a landlord or agent of a landlord to give a person personal information if the landlord or agent has previously given the information to the person under this section

Disputes about listings

157.

(1) Application

A person may apply to the Commission for an order under this section if personal
information about the person has been, or is proposed to be, listed in a residential tenancy database.

(2) Grounds for order

The Commission may make an order under this section if it is satisfied that:

(a) the residential tenancy database includes personal information about the applicant that is inaccurate, incomplete, ambiguous or out-of-date or that has been listed on the database for longer than the applicable period specified in section 218 (1), or

(b) the inclusion of the applicant’s name or other personal information about the applicant is unjust in the circumstances, having regard to the following:

   i. the reason for the listing,
   ii. the tenant’s involvement in any acts or omissions giving rise to the listing,
   iii. any adverse consequences suffered, or likely to be suffered, by the tenant because of the listing,
   iv. any other relevant matter.

(3) Orders by Commission

The Commission may order personal information about a person in a residential tenancy database to be wholly or partly removed, amended in a stated way or not listed in a residential tenancy database. The Commission must give a copy of the order to the landlord, tenant and database operator.

(4) Orders affecting other persons

If the Commission makes an order directing a person other than a landlord or agent to remove, amend or not list information in a residential tenancy database, the Commission must give a copy of the order to the person.

Limit on period of listing

158.

(1) A database operator must not keep personal information in the operator’s residential tenancy database for longer than:

   (a) if the Ministry of Information require the operator to remove the personal information within a stated period of less than 3 years—the stated period, or
   (b) in any other case—3 years.

(2) However, this section does not apply to a person’s name if it is necessary to keep the name in the residential tenancy database for the purposes of other personal information about the person in the database that is not required to be removed under this section or another
(3) This section does not limit the operation of this Act or any other law that requires the removal of the personal information.

Part 14 - Miscellaneous

Contracting out prohibited

159.
(1) A term of any residential tenancy agreement, contract or other agreement is void to the extent that it purports to exclude, limit or modify the operation of this Act or the regulations or has the effect of excluding, limiting or modifying the operation of this Act or the regulations.

(2) A person must not enter into any contract or other agreement, with the intention, either directly or indirectly, of defeating, evading or preventing the operation of this Act or the regulations.

(3) A landlord’s agent must not enter into any contract or other agreement with the intention, either directly or indirectly, of obtaining exclusion from or indemnity for personal liability for any act on behalf of the landlord that renders the landlord’s agent liable for an offence under this Act.

Penalty of $2,000.00

Contracts Review Act 1980

160.

Tenants’ agents

161.
(1) A tenant may appoint a person as the tenant’s agent for the purpose of receiving notices or documents given under the residential tenancy agreement or this Act or the regulations.

(2) The tenant may appoint the agent in the residential tenancy agreement or at any time during the tenancy by written notice given to the landlord or the landlord’s agent.

(3) An appointment may be revoked at any time by written notice given to the landlord or the landlord’s agent.
(4) A landlord, landlord’s agent or the Commission (if aware of the appointment) must give to the tenant’s agent any notices or other documents required to be given to the tenant under the residential tenancy agreement or this Act or the regulations.

(5) Any such notice or document is taken to have been given to the tenant if it is given to the tenant’s agent.

Service of notices or other documents

162.
(1) A notice or other document that is authorised or required by this Act or the regulations or a residential tenancy agreement to be given to or served on any person may be given or served by:

(a) in the case of a natural person:

i. delivering it to the person personally, or

ii. delivering it personally to a person apparently of or above the age of 16 years at the person’s residential or business address, or

iii. delivering it in an envelope addressed to the person and leaving it in a mailbox at the person’s residential or business address, or

iv. sending it by post to the address specified by the person for the giving or service of documents or, if no such address is specified, the residential or business address of the person last known to the person giving or serving the document, or

v. sending it by facsimile transmission to the facsimile number of the person, or

(b) in the case of a corporation:

i. leaving it with a person apparently of or above the age of 16 years at, or by sending it by post to, the head office, a registered office or a principal office of the corporation or to an address specified by the corporation for the giving or service of documents, or

ii. sending it by facsimile transmission to the facsimile number of the corporation, or

(c) in the case of a government department:
i. leaving it at, or by sending it by post to, any office of the government department, or

ii. sending it by facsimile transmission to the facsimile number of the government department,

iii. addressed to the head of the government department.

(2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person in any other manner.

(3) If there is more than one landlord or tenant under a residential tenancy agreement, a notice required to be served on a tenant or landlord under the agreement is taken to be served on all the tenants or landlords under the agreement if it is served on one of the tenants or landlords.

**Regulations**

163.

(1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular, regulations may be made for or with respect to the following matters:

(a) a standard form or forms of residential tenancy agreement,

(b) a standard form or forms of condition report,

(c) forms for notices under this Act,

(d) the periods for which records under this Act or the regulations must be kept, (e) the times within which applications must be made to the Commission under this Act or the regulations.

(3) A regulation may create an offence punishable by a penalty not exceeding 10 penalty units.

**Exclusion of personal liability**

164.

A matter or thing done or omitted to be done by the Chief Executive Officer, an investigator, a member of the Board or any person acting under the direction of
the Commission or a member of the Board does not, if the matter or thing was done or omitted in good faith for the purpose of executing this Act or the regulations, subject the Director-General, investigator, member of the Board or person so acting personally to any action, liability, claim or demand.

**Savings and transitional provisions**

165.

Schedule 2 contains savings and transitional provisions.

**Review of Act**

166.

(1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

(2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.

(3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.