



New South Wales

Residential Tenancies Amendment (Social Housing) Bill 1998

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Residential Tenancies Act 1987* in so far as that Act applies to social housing tenancies, so as to make further provision with respect to:

- (a) the class of matters that are taken by that Act to constitute a breach of a residential tenancy agreement, and
 - (b) the matters to be taken into consideration by the Residential Tenancies Tribunal when hearing an application for termination of a tenancy by a landlord that is a social housing provider, and
 - (c) the powers of the Tribunal in cases of actual or apprehended damage to property or threats to persons by tenants, and
 - (d) the issue of warrants for possession of premises, and
 - (e) rent increases, in so far as they affect tenants in receipt of rental subsidies.
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Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Residential Tenancies Act 1987* set out in Schedule 1.

Schedule 1 Amendments

Definitions relating to social housing

Schedule 1 [1] inserts definitions of *rent rebate*, *social housing premises* and *social housing provider* in section 3 of the Act.

Conditions of residential tenancy agreements

Section 23 of the Act sets out certain requirements that are taken to form part of every residential tenancy agreement, so that a failure to abide by these requirements constitutes a breach of the agreement and renders the tenancy liable to termination by the Residential Tenancies Tribunal. **Schedule 1 [2]** amends the section to provide that a tenant of social housing premises is taken to be in breach of the relevant residential tenancy agreement if the tenant, or any person occupying the premises with the tenant's consent, wilfully or negligently causes or permits damage to adjoining or adjacent property or uses any such property for the manufacture or sale of prohibited drugs.

Rental subsidies

Schedule 1 [3] amends section 44 of the Act to make it clear that, for the purposes of Division 2 of Part 4 of the Act (which applies to rent and rent increases), the cancellation or reduction of a rent rebate is not a rent increase, nor is it a reduction or withdrawal of any aspect of ancillary provision made by the landlord in connection with a tenancy. It is made clear, as a consequence, that the Tribunal has no jurisdiction to adjudicate disputes that are essentially just disputes about rental subsidies.

Termination of residential tenancies for breach of agreement

Under section 64 of the Act a landlord may apply to the Tribunal to terminate a residential tenancy on the ground that the tenant is in breach of the residential tenancy agreement. **Schedule 1 [4]** amends the section to provide that, where the application is made by a social housing provider, the Tribunal is obliged to consider, along with other matters it considers in such cases (such as the circumstances and welfare of the tenant), certain other aspects of the matter, such as the obligations of the landlord to its other tenants, the interests of other persons eligible for social housing, any adverse impact on neighbouring residents, the conduct of the tenant and the history of the tenancy.

In cases where the breach of the residential tenancy agreement is found to be one that subjects persons or property to unreasonable risk, or that involved the use of the residential property or adjoining or adjacent property for the manufacture or sale of prohibited drugs, the tenancy termination will usually be accompanied by an order in favour of the landlord that will require immediate surrender of the premises by the tenant.

Damage or injury caused by occupiers other than the tenant

Section 68 of the Act allows the Tribunal to terminate a residential tenancy if the tenant causes, or is likely to cause, damage to the premises or injury to the landlord, the landlord's agent or neighbouring occupiers. **Schedule 1 [5]** amends the section so that it provides that a tenancy of social housing premises may, in addition, be terminated by the Tribunal if the damage or injury was caused or apprehended in respect of adjoining or adjacent property.

Orders for possession

Under section 73 of the Act the Tribunal may, on application by a person in whose favour an order for possession of premises was made, issue a warrant for enforcement of the order. The Tribunal may refuse to issue the warrant if in its opinion the application is unduly late. **Schedule 1 [6]** amends the section to provide that, in the case of a tenancy of social housing premises, the application is not to be considered unduly late if the delay is due to bona fide efforts by the landlord to reach agreement with the tenant so that the tenancy might continue.

First print



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New South Wales

Residential Tenancies Amendment (Social Housing) Bill 1998

No. , 1998

A Bill for

An Act to amend the *Residential Tenancies Act 1987* with respect to social housing tenancies.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Residential Tenancies Amendment (Social Housing) Act 1998*.

2 Commencement

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This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Residential Tenancies Act 1987 No 26

The *Residential Tenancies Act 1987* is amended as set out in Schedule 1.

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Schedule 1 Amendments

(Section 3)

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

rent rebate means an amount waived or remitted, in accordance with a scheme established under any Act, from rent payable to a social housing provider. 5

social housing premises means residential premises let by a social housing provider under a residential tenancy agreement (otherwise than in the circumstances, if any, prescribed by the regulations). 10

social housing provider means any of the following:

- (a) the New South Wales Land and Housing Corporation,
- (b) the New South Wales Department of Housing, 15
- (c) the Office of Community Housing of the Department of Urban Affairs and Planning,
- (d) the Aboriginal Housing Office,
- (e) an organisation for the time being registered with the Office of Community Housing, or under Part 5 of the *Aboriginal Housing Act 1998*, 20
- (f) an organisation prescribed by the regulations.

[2] Section 23 Use of premises by tenant

Insert at the end of section 23:

- (2) The tenant under a residential tenancy agreement entered into in respect of social housing premises is taken to have breached a term of the agreement if the tenant, or any person who, although not a tenant, is occupying (or jointly occupying) the residential premises with the consent of the tenant: 25
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- (a) intentionally or negligently causes or permits damage to any property adjoining or adjacent to the premises (including any property available for use by the tenant in common with others), or
- (b) uses 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 or sale of any prohibited drug within the meaning of the *Drug Misuse and Trafficking Act 1985*.

[3] Section 44 Application of Division

Insert at the end of section 44:

- (2) An increase in the amount payable by a tenant because of the cancellation or reduction of a rent rebate is not a rent increase for the purposes of this Division, and such a cancellation or reduction does not constitute a withdrawal of goods, services or facilities as mentioned in section 47.

[4] Section 64 Application to Tribunal by landlord for termination and order for possession

Omit section 64 (4). Insert instead:

- (4) Without limiting the obligations of the Tribunal under subsection (2), in considering the circumstances of a case concerning social housing premises, the Tribunal, in addition to having regard to the circumstances of the tenant and other circumstances of the case, is to have regard to such of the following matters as may be relevant:
 - (a) any serious adverse effects the tenancy has had on neighbouring residents or other persons,

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Amendments

Schedule 1

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- (b) whether the breach of the residential tenancy agreement was a serious one (and, in particular, whether it was one to which subsection (6) applies), and whether, given the behaviour or likely behaviour of the tenant, a failure to terminate the agreement would subject, or continue to subject, neighbouring residents or any persons or property to unreasonable risk, 5
- (c) the landlord's responsibility to its other tenants,
- (d) whether the tenant, wilfully or otherwise, is or has been in breach of an order of the Tribunal, 10
- (e) the history of the tenancy concerned,
- (f) the demand for the dwelling from other prospective tenants eligible to be provided with social housing premises. 15
- (5) If the Tribunal makes an order terminating a residential tenancy agreement under this section, it must make a further order for possession of the residential premises, specifying the day on which the order takes effect.
- (6) If the residential premises concerned are social housing premises, an order for possession made under this section is to be expressed to take effect immediately if the breach of the agreement: 20
- (a) involves the use of the premises, or any property adjoining or adjacent to the premises (including any property available for use by the tenant in common with others), for the purposes of the manufacture or sale of any prohibited drug within the meaning of the *Drug Misuse and Trafficking Act 1985*, or 25 30
- (b) subjects persons or property to unreasonable risk, unless the Tribunal considers that it would be unjust to do so.
- (7) Nothing in this section affects the operation of section 68. 35
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[5] Section 68 Tribunal may terminate residential agreement where tenant causes serious damage or injury

Insert after section 68 (2):

- (3) In the case of a tenancy of social housing premises, a reference in subsection (1) (a) to the residential premises is taken to include a reference to any property adjoining or adjacent to the premises (including any property available for use by the tenant in common with others). 5

[6] Section 73 Enforcement of orders for possession

Insert after section 73 (6): 10

- (7) A delay on the part of an applicant who is a social housing provider in making an application under this section is not to be regarded by the Tribunal as good cause to refuse to grant the application, to the extent that the delay is attributable to bona fide attempts by the applicant to reach agreement with the tenant for reinstatement of the tenancy. 15

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Schedule of the amendment referred to in the Legislative Council's Message
of 10 November 1998.

Page 5, Schedule 1 [4]. Lines 13-15. Omit all words on those lines.
