New South Wales

Residential Tenancies Amendment (Protection of Personal Information) Bill 2025

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 2010* as follows—

(a) to require a landlord or landlord's agent to make disclosures in relation to exclusive supply networks, the use of digitally generated or altered images and other prescribed information when advertising residential premises for rent,

(b) to require a landlord or landlord's agent to disclose the existence of an exclusive supply network for residential premises, and the relevant services supplied under the network, before entering into a residential tenancy agreement for the premises,

(c) to require a landlord or landlord's agent to give a rent record to a tenant when a tenancy terminates,

(d) to allow a tenant who applies for consent to keep a pet within 7 days after entering into a residential tenancy agreement to keep the pet until the landlord gives a written response,

(e) to apply the Australian Privacy Principles to landlords, agents of landlords and persons employed or engaged by landlords, agents of landlords or tenants to deal with tenants' personal information (each a *residential tenancy entity*),

(f) to provide for additional measures to protect tenants' personal information, including in relation to the collection, use and destruction of personal information and penalties for contraventions,

(g) to increase the penalties for offences relating to terms that must or must not be included in residential tenancy agreements, amounts payable by a tenant before or on entering into a residential tenancy agreement and the way rent is paid,

(h)   to authorise the Civil and Administrative Tribunal (the *Tribunal*) to restrict the collection, use or disclosure of personal information by a residential tenancy entity, to require a residential tenancy entity to give access to, or to destroy, amend or de-identify, personal information held by the entity, and to make an order of compensation for economic loss suffered because of a contravention of the new measures to protect tenants' personal information,

(i)   to require landlords, agents of landlords and database operators to give a person, on request, a copy of personal information about the person listed in a residential tenancy database,

(j)   to provide for regulation-making powers in relation to the protection of tenants' personal information.

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.

Schedule 1   Amendment of Residential Tenancies Act 2010 No 42

Schedule 1[1] amends section 3 to insert definitions consequential on other amendments in Schedule 1.

Schedule 1[2] amends section 22 to increase the penalties that apply if a landlord—

(a)   fails to use the prescribed residential tenancy agreement form, or

(b)   fails to include all required terms in a residential tenancy agreement, or

(c)   includes a prohibited term in a residential tenancy agreement.

Schedule 1[3] inserts proposed section 22B, which requires a landlord or landlord's agent to disclose in an advertisement or other offer relating to residential premises for rent—

(a)   the existence of an exclusive supply network for the supply of electricity, gas, hot water, chilled water, internet access or another service prescribed by the regulations (a *relevant service*), and the relevant service supplied, and

(b)   the use of digitally generated or altered images if the images are reasonably likely to mislead or deceive a person, and

(c)   the information required by the regulations.

Schedule 1[4] amends section 23 to increase the penalties that apply if a landlord contravenes requirements limiting the amounts payable by a tenant before or on entering into a residential tenancy agreement.

Schedule 1[5] inserts proposed section 26(2B) and (2C) to require a landlord or landlord's agent to disclose to a tenant before entering into a residential tenancy agreement any relevant service provided to the residential premises under an exclusive supply network. **Schedule 1[6]** amends section 26(3) to provide that the requirements in proposed section 26(2B) only apply to a landlord's agent if the agent is aware of the matters to be disclosed.

Schedule 1[7] and [8] amend section 35 to increase or provide for the penalties that apply if a landlord or landlord's agent contravenes requirements relating to the way rent is paid.

Schedule 1[9]–[11] amend section 37 to provide for penalties to apply if a landlord or landlord's agent contravenes requirements relating to keeping a rent record and providing a rent record to a tenant on written request.

Schedule 1[12] inserts proposed section 37A to require a landlord or landlord's agent to give a tenant, within 7 days after the termination of a residential tenancy agreement or the period specified in the regulations, a rent record for the tenancy period.

Schedule 1[13] inserts proposed section 73B(1A) to allow a tenant who applies for consent to keep a pet within 7 days after entering into a residential tenancy agreement to keep the pet until the landlord gives a written response.

Schedule 1[15] amends section 187(2) to authorise the Tribunal to make orders of compensation for economic loss suffered by a person as a result of a contravention of proposed Division 1A or 1B in Part 11.

Schedule 1[16] substitutes the heading to Part 11.

Schedule 1[17] amends section 209 to insert definitions consequential on proposed Divisions 1A, 1B and 3 in Part 11.

Schedule 1[19] amends section 209 to substitute the definition of *residential tenancy database* to clarify its scope and to align the definition with inserted definitions consequential on proposed Divisions 1A, 1B and 3 in Part 11.

Schedule 1[21] inserts proposed Divisions 1A and 1B into Part 11 to set out protections for the personal information of tenants. **Schedule 1[14], [18], [20], [22], [29], [31] and [38]** make consequential amendments. The proposed divisions comprise proposed sections 210–210G.

Proposed section 210 adopts the Australian Privacy Principles under the *Privacy Act 1988* of the Commonwealth.

Proposed section 210A applies the Australian Privacy Principles to residential tenancy entities in relation to personal information about tenants.

Proposed section 210B provides that the protections for tenants' personal information under proposed Division 1B apply in addition to the Australian Privacy Principles.

Proposed section 210C requires a landlord or an agent of a landlord to offer a tenant a way of giving personal information directly. The proposed section also provides that a residential tenancy entity may only collect personal information directly from the tenant unless the tenant consents to the information being collected in another way or the regulations permit the information to be collected in another way. Proposed section 210C(3)(b) may be a Henry VIII provision because the provision will enable the regulations to impliedly amend the *Residential Tenancies Act 2010* by affecting the application of the Act.

Proposed section 210D requires a residential tenancy entity to use an approved form for a residential tenancy application and provides that a residential tenancy entity must not accept a tenancy application from a person before the person inspects the residential premises, with certain exceptions.

Proposed section 210E provides that a residential tenancy entity may collect a tenant's identity verification information only if the landlord intends to enter into a residential tenancy agreement with the tenant and notifies the tenant in writing of the intent.

Proposed section 210F prohibits a residential tenancy entity that holds personal information about a tenant that was collected in contravention of Part 11 or the regulations from using the information to verify the tenant's identity or to determine the tenant's ability to pay rent or whether the tenant is reasonably likely to fulfil the obligations of a tenant. It also requires the entity to destroy the information. The regulations may provide for circumstances in which the requirements do not apply. Proposed section 210F(3) may be a Henry VIII provision because the provision will enable the regulations to impliedly amend the *Residential Tenancies Act 2010* by affecting the application of the Act.

Proposed section 210G authorises the Tribunal to make orders restricting the collection, use or disclosure of personal information by a residential tenancy entity or requiring an entity to give access to, or to destroy, amend or de-identify, personal information held by the entity.

Schedule 1[23] amends section 211 to provide for a penalty to apply if a landlord or agent of a landlord who uses a residential tenancy database in deciding whether a residential tenancy agreement should be entered into with a person contravenes requirements to give the person

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written notice and information about how to seek a copy of the information and how and in what circumstances the person can have the information removed or amended.

Schedule 1[24] and [25] amend section 212 to clarify that a landlord or agent of a landlord may list personal information in a residential tenancy database only if it is relevant to the matters set out in section 212 relating to the person's breach of a residential tenancy agreement and to provide for a penalty for listing personal information in contravention of the section's requirements.

Schedule 1[26] amends section 213 to increase the penalties that apply if a landlord or agent of a landlord lists personal information about a person in a residential tenancy database without disclosing the information to the person and considering the person's submissions or when a database operator lists personal information in a database other than at the request of a landlord or agent in accordance with Part 11.

Schedule 1[27] amends sections 213(3) and 213A to replace the defined term *landlord's agent* with the broader defined term *agent of a landlord* to align with other provisions relating to residential tenancy databases.

Schedule 1[28] amends section 213A to increase the penalties that apply if a landlord or agent of a landlord lists in a residential tenancy database personal information about a person whose tenancy was terminated because the person was in circumstances of domestic violence.

Schedule 1[30] substitutes section 214(2) and (2A) to align the requirements for accuracy of personal information listed in a residential tenancy database with the Australian Privacy Principles and to provide for penalties to apply if a landlord or agent of a landlord contravenes the requirement to give written notice to the database operator if the landlord or agent becomes aware that listed information is inaccurate, ambiguous, out-of-date, incomplete, irrelevant or misleading.

Schedule 1[32] and [33] amend section 215 to require a residential tenancy database operator to amend personal information in the residential tenancy database, or remove the information from the database, within the prescribed period, or if no period is prescribed as soon as practicable, after receiving notice from the landlord or agent of a landlord that the information must be amended to make it accurate, unambiguous, complete and not misleading or must be removed. The amendment also increases the penalties that apply when an operator contravenes this requirement.

Schedule 1[34] substitutes section 216 to add a requirement for a landlord, agent of a landlord or database operator to confirm, within the prescribed period after a person's request, or if no period is prescribed as soon as practicable, whether personal information about the person is listed in a residential tenancy database. The proposed section also increases the penalty that applies if a database operator charges a fee for giving a person a copy of personal information about the person held in the database, consistent with the penalty applying to landlords and agents. A landlord, agent of a landlord or database operator is not required to give a person a copy of information if the person has previously been given the information, unless required under the regulations. Proposed section 216(6)(d) may be a Henry VIII provision because the provision will enable the regulations to impliedly amend the *Residential Tenancies Act 2010* by affecting the application of the Act.

Schedule 1[35] amends section 217(2) to add authority for the Tribunal to make an order in relation to personal information held in a residential tenancy database if the information is held in contravention of the requirements in Part 11 or the regulations.

Schedule 1[36] substitutes section 218(1)(a) to require a database operator to remove personal information from a residential tenancy database at the end of 3 years, the period required by the Australian Privacy Principles or the period required by the regulations, whichever is shortest.

Schedule 1[37] amends 218(1) to provide for penalties to apply if a database operator keeps personal information in a residential tenancy database for longer than the period required under section 218.

Schedule 1[39] inserts proposed Division 3 into Part 11 to provide for regulation-making powers in relation to—

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    (a)   additional requirements for residential tenancy entities and database operators relating to the collection, use, disclosure, management, security and destruction of tenants' personal information, and

    (b)   access to, and the correction of, personal information, and

    (c)   matters relating to record-keeping and giving and receiving written information and communications, and

    (d)   the application of specified provisions of proposed Division 1B and the regulations to public sector agencies, and

    (e)   the creation of offences.