

Introduced by the Hon Ian Cohen, MLC

First print



New South Wales

Residential Tenancies Amendment (Domestic Violence) Bill 1999

Explanatory note

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

The *Residential Tenancies Amendment (Olympic Games) Bill 1999* is cognate with this Bill.

Overview of Bill

The object of this Bill is to amend the *Residential Tenancies Act 1987* in relation to domestic violence committed in residential premises.

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 the date of assent.

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

Schedule 1 [1] inserts definitions of *apprehended violence order*, *domestic violence* and *person in a domestic relationship with the tenant*.

Schedule 1 [2] makes it a term of a residential tenancy agreement that a tenant must not commit an act of domestic violence in residential premises.

Schedule 1 [3] permits a co-tenant under a residential tenancy agreement to apply to the Residential Tribunal for the assignment of his or her co-tenancy to another person where an act of domestic violence has been or is likely to be committed by one co-tenant against another, and permits the Tribunal to assign a co-tenancy.

Schedule 1 [4] allows a person who has had an act of domestic violence committed against them by a tenant of premises under a residential tenancy agreement to apply to the Tribunal to be recognised instead as the tenant of the residential premises. The section also makes the existence and nature of a apprehended violence order against the current tenant an issue that the Tribunal must have regard to in deciding such an application.

The proposed provision applies to both a person in a domestic relationship with the tenant and a co-tenant in a domestic relationship with the other or another co-tenant.

Schedule 1 [5] allows a co-tenant to apply to the Tribunal for an order for possession where another co-tenant has caused or is likely to intentionally or recklessly cause injury to the applicant or to persons lawfully on the premises, or has caused serious damage to the premises themselves.

Schedule 1 [6] gives similar rights to a tenant with respect to behaviour by a landlord that causes or is likely to cause injury to the tenant or another person or damage to the tenant's goods or another person's goods.

Schedule 1 [7] specifies certain grounds on which termination of a residential tenancy agreement can be effected by the Tribunal on the basis of undue hardship to the tenant. These grounds include domestic violence between the tenant and an occupant. It is also extended to include verbal abuse, or threats, or harassment, or intimidation by the landlord, and in these particular circumstances the amended provision allows the Tribunal to make an order for compensation to the tenant covering reasonable costs for finding and relocating to new premises.

Schedule 1 [8] allows the Tribunal to make an interim order restraining domestic violence if an application is made to terminate a residential tenancy agreement under proposed section 68A or 68B.

Schedule 1 [9] prohibits the Tribunal from conciliating matters involving domestic violence. The Tribunal ordinarily has a duty to attempt to conciliate matters before it makes an order (see section 49 of the *Residential Tribunal Act 1998*).

Schedule 1 [10] inserts a power to make regulations of a saving and transitional nature consequent on the enactment of the proposed Act.

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Residential Tenancies Amendment (Domestic Violence) Bill 1999

No. , 1999

A Bill for

An Act to amend the *Residential Tenancies Act 1987* in relation to domestic violence committed in residential premises; and for other purposes.

See also *Residential Tenancies Amendment (Olympic Games) Bill 1999*.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Residential Tenancies Amendment (Domestic Violence) Act 1999</i> .	3 4
2 Commencement	5
This Act commences on the date of assent.	6
3 Amendment of Residential Tenancies Act 1987 No 26	7
The <i>Residential Tenancies Act 1987</i> is amended as set out in Schedule 1.	8 9

Schedule 1 Amendments

	1
	2
(Section 3)	3
	4
[1] Section 3 Definitions	5
Insert in alphabetical order in section 3 (1):	6
	7
<i>apprehended violence order</i> means an order made pursuant	8
to Part 15A of the <i>Crimes Act 1900</i> .	9
<i>domestic violence</i> includes any behaviour or conduct for	10
which an apprehended violence order may be made pursuant	11
to Part 15A of the <i>Crimes Act 1900</i> .	12
<i>person in a domestic relationship with the tenant</i> includes:	13
(a) the spouse or former spouse of the tenant, or	14
(b) the de facto partner (as defined in the <i>De Facto</i>	15
<i>Relationships Act 1984</i>) or former de facto partner of	16
the tenant, or	17
(c) a person who is living with or has ordinarily lived in	18
the same household in an intimate relationship with	19
the tenant.	20
	21
[2] Section 23A	22
Insert after section 23:	23
	24
23A Use of premises by tenant—domestic violence	25
It is a term of every residential tenancy agreement that the	26
tenant must not commit an act of domestic violence in the	27
residential premises.	28
	29

[3]	Section 33A	1
	Insert after section 33:	2 3
	33A Assignment of co-tenancy	4
	The Tribunal may, on application by a co-tenant under a residential tenancy agreement, make an order assigning a co-tenancy from one co-tenant to another where it is satisfied that an act of domestic violence has been, or is likely to be, committed by one co-tenant against the other, or another, co-tenant.	5 6 7 8 9 10
		11
[4]	Section 35AA	12
	Insert after section 35:	13 14
	35AA Recognition of certain persons as tenants—domestic violence	15
	(1) A person may apply to the Tribunal for an order to be recognised as the tenant under a residential tenancy agreement instead of the person currently recognised as the tenant because that person has committed an act of domestic violence against the person seeking the order.	16 17 18 19 20
	(2) In deciding the application, the Tribunal must have regard to the following issues:	21 22
	(a) whether the person has a current apprehended violence order against the tenant,	23 24
	(b) if an apprehended violence order has been made, whether a condition was imposed excluding the tenant from entering or remaining on the premises.	25 26 27
	(3) Where either paragraph (a) or (b) of subsection (2) is satisfied, the Tribunal must make an order recognising the applicant as the tenant.	28 29 30
	(4) Subsection (2) does not limit the issues to which the Tribunal may have regard.	31 32

(5)	This section applies to:	1
(a)	a person in a domestic relationship with the tenant who occupies the premises as his or her residential address, or	2 3 4
(b)	a co-tenant in a domestic relationship with the other or another co-tenant.	5 6
(6)	The Tribunal may not make an order under subsection (1) without giving the landlord the opportunity to be heard on the application.	7 8 9
(7)	Within 7 days after the making of an order under subsection (1), a residential tenancy agreement giving effect to the order must be entered into by the relevant parties.	10 11 12
(8)	Until such an agreement is entered into, a residential tenancy agreement giving effect to the order is taken to be in force.	13 14 15
		16
[5]	Section 68A	17
	Insert after section 68:	18 19
	68A Tribunal may terminate residential tenancy agreement where co-tenant causes serious damage or injury	20 21
	A co-tenant may apply to the Tribunal for an order for possession because the other, or another, co-tenant has intentionally or recklessly caused, or is likely to intentionally or recklessly cause:	22 23 24 25
(a)	injury to:	26
(i)	the applicant, or	27
(ii)	someone else occupying, or allowed on, the premises, or	28 29
(b)	serious damage to the premises.	30
		31

[6]	Section 68B	1
	Insert as section 68B:	2 3
	68B Tribunal may terminate residential tenancy agreement where landlord causes serious damage or injury	4 5
	A tenant may apply to the Tribunal for an order for possession because the landlord has intentionally or recklessly caused, or is likely to intentionally or recklessly cause:	6 7 8 9
	(a) injury to:	10
	(i) the tenant, or	11
	(ii) someone else occupying, or allowed on, the premises, or	12 13
	(b) damage to:	14
	(i) the tenant's goods, or	15
	(ii) the goods of someone else occupying, or allowed on, the premises.	16 17
		18
[7]	Section 69A Tribunal may terminate residential tenancy agreement where tenant would otherwise suffer undue hardship	19 20
	Insert after section 69A (3):	21 22
	(4) For the purposes of this section, and without limitation, undue hardship may be suffered because of:	23 24
	(a) circumstances of domestic violence between the tenant and another occupant, or	25 26
	(b) verbal abuse, or threats, by the landlord, or	27
	(c) harassment by the landlord, or	28
	(d) intimidation by the landlord.	29

(5)	If the Tribunal makes an order terminating a residential tenancy agreement under this section, the Tribunal may make an order awarding compensation to the tenant for the reasonable costs of finding and relocating to alternative residential premises if it is satisfied that the undue hardship is or would be caused by the landlord's verbal abuse, threats, harassment or intimidation.	1 2 3 4 5 6 7
		8
[8]	Section 85 Orders of the Tribunal	9
	Insert after section 85 (3):	10 11
(4)	If a tenant or co-tenant makes an application under section 68A or 68B, the Tribunal may, in the absence of any party, make an interim order restraining the landlord or a co-tenant from committing further acts of domestic violence if the Tribunal is of the opinion that it is necessary to do so for the protection of the applicant or other occupants of the premises.	12 13 14 15 16 17 18
		19
[9]	Section 85A	20
	Insert after section 85:	21 22
85A	Tribunal not to attempt to conciliate domestic violence matters	23
	The Tribunal is not to conciliate, or attempt to conciliate, in a matter where one of the parties discloses or alleges that acts of domestic violence have been committed on one of the parties by another party.	24 25 26 27

Residential Tenancies Amendment (Domestic Violence) Bill 1999

Schedule 1 Amendments

**[10] Schedule 4 Savings, transitional and other provisions consequent
 on enactment of amending legislation**

Insert "*Residential Tenancies Amendment (Domestic Violence) Act
1999*" at the end of clause 1 (1).

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