

Introduced by the Hon Ian Cohen, MLC

First print



New South Wales

Residential Tenancies Amendment (Olympic Games) Bill 1999

Explanatory note

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

This Bill is cognate with the *Residential Tenancies Amendment (Domestic Violence) Bill 1999*.

Overview of Bill

The object of this Bill is to amend the *Residential Tenancies Act 1987* in relation to rents for residential premises during and around the time the Sydney Olympic Games are held.

Outline of provisions

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

Clause 2 provides that the proposed Act will commence 2 months after assent, unless commenced sooner 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

Schedule 1 [1] creates an exemption from the general rule that the *Residential Tenancies Act 1987* applies to residential tenancy agreements entered into after the commencement of the Act. The proposed Act makes special provisions applying to residential tenancy agreements in force during and around the period of the Sydney Olympic Games.

Schedule 1 [2], [3] and [4] make amendments with respect to the application of the Act to holiday premises. The amendments make the nature of the letting the determinant of the jurisdiction of the Act, rather than the nature of the premises themselves, with the intention of broadening the circumstances in which residential tenants are afforded protection. As a result of the amendments, the Act will apply to any premises ordinarily used for holiday purposes if they are so used for more than 2 months.

Schedule 1 [5] gives effect to the Schedule containing proposed special provisions applying for the period of the Sydney Olympic Games, and provides for the making of regulations of a savings and transitional nature consequent on the proposed Schedule ceasing to have effect.

Schedule 1 [6] inserts a power to make regulations of a savings and transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [7] inserts a new Schedule 5 containing special provisions for a specified period. Those provisions are described below.

Schedule 5 Special provisions applying for period of Sydney Olympic Games

Part 1 Preliminary

Clause 1 inserts definitions used in the proposed Schedule of *premises ordinarily the subject of a residential tenancy agreement, previous residential tenancy agreement, Rent Report* and *Sydney Statistical Division*.

Clause 2 applies the proposed Schedule to new and existing residential tenancy agreements that are in force in the Sydney Statistical Division, and describes the duration of the operation of the proposed Schedule.

Clause 3 exempts those residential tenancy agreements from the operation of certain provisions of the Act that deal with rent increases and termination of residential tenancy agreements.

Part 2 Setting of rents

Clause 4 requires that rents payable under residential tenancy agreements to which the proposed Schedule applies are to be determined in accordance with Part 2 of the Schedule.

Clause 5 sets out a formula for the maximum rent payable in respect of residential premises ordinarily the subject of a residential tenancy agreement.

Clause 6 sets out factors that a landlord must take into account in determining rent in respect of residential premises not ordinarily the subject of a residential tenancy agreement, including various valuations, costs and improvements, the condition of the premises and other matters.

Clause 7 gives the Residential Tenancies Tribunal a power to determine that rent is excessive, sets out factors it should take into account in making such a determination, and lays the onus of proving the rent is not excessive on the landlord.

Clause 8 gives the Tribunal power to make orders with respect to applications relating to excessive rents.

Part 3 Rent increases

Clause 9 restricts the frequency of rent increases under relevant residential tenancy agreements to once every 12 months.

Clause 10 sets out a formula for the maximum rent increase allowable under such residential tenancy agreements.

Clause 11 gives the Tribunal the power in certain circumstances to approve a rent increase in excess of that allowed under proposed clause 10.

Clause 12 empowers the Tribunal to make orders regarding rent increases.

Part 4 Termination

Clause 13 outlines how a notice of termination of a residential tenancy agreement is to be given.

Clause 14 requires at least a 60-day notice period under a notice of termination given by a landlord to a tenant when the landlord has entered into a contract of sale of the premises that requires the landlord to give vacant possession.

Clause 15 specifies other grounds involving major changes to the premises for which at least 90 days' notice is required to be given by the landlord.

Clause 16 provides for the giving of notice of termination by a landlord to a tenant when the landlord or a relative of the landlord wishes to use the residential premises as a principal residence. The term *relative* is defined in the clause.

Clause 17 specifies the notice requirements for termination of a residential tenancy agreement by a landlord on ground of breach of agreement (other than arrears in rent).

Clause 18 specifies the notice requirements for termination of a residential tenancy agreement by a landlord on ground of breach of agreement (involving arrears in rent).

Clause 19 specifies the notice requirements for termination of a residential tenancy agreement by a tenant at the completion of a fixed term residential tenancy agreement.

Part 5 Miscellaneous

Clause 20 creates offences in relation to contravention or failure to comply with the proposed provisions setting out formulae and factors to be taken into account in setting rent.

Clause 21 excludes section 9 (2) (b) of the *Landlord and Tenant (Rental Bonds) Act 1977* from applying to furnished premises with a weekly rental of \$1000 or more, and allows for the making of regulations that alter the relevant monetary

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figure. This provision means the restriction on the amount of a rental bond that can be imposed under section 9 (2) of that Act will not apply to premises rented for relatively high amounts.

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Residential Tenancies Amendment (Olympic Games) Bill 1999

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Residential Tenancies Amendment (Olympic Games) Bill 1999

No. , 1999

A Bill for

An Act to amend the *Residential Tenancies Act 1987* in relation to rents for residential premises during and around the time the Sydney Olympic Games are being held; and for other purposes.

The Legislature of New South Wales enacts: 1

1 Name of Act 2

 This Act is the *Residential Tenancies Amendment (Olympic Games) Act 1999*. 3
4

2 Commencement 5

 This Act commences on the day occurring 2 months after the date of assent, unless commenced sooner by proclamation. 6
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3 Amendment of Residential Tenancies Act 1987 No 26 8

 The *Residential Tenancies Act 1987* is amended as set out in Schedule 1. 9
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Schedule 1 Amendments

		1
		2
	(Section 3)	3
[1]	Section 5 Application of Act	4
	Omit section 5 (1). Insert instead:	5
	(1) This Act (except as provided by Schedule 5) applies to residential tenancy agreements made after the commencement of this section.	6
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[2]	Section 6 Agreements and premises to which Act does not apply	10
	Omit section 6 (1) (e). Insert instead:	11
	(e) if the agreement is made in good faith for the purpose of giving a right to occupy residential premises for a period of not more than 2 months for the purpose of a holiday.	12
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[3]	Section 6 (2) (c)	17
	Omit the paragraph.	18
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[4]	Section 6 (3)	20
	Omit "(c)".	21
		22
[5]	Section 138	23
	Insert after section 137:	24
		25
138	Special provisions applying for period of Sydney Olympic Games	26
		27
	(1) Schedule 5 has effect.	28
	(2) The regulations may contain provisions of a savings or transitional nature consequent on Schedule 5 ceasing to have effect.	29
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[6]	Schedule 4 Savings, transitional and other provisions consequent on enactment of amending legislation	1
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		3
	Insert " <i>Residential Tenancies Amendment (Olympic Games) Act 1999</i> "	4
	at the end of clause 1 (1).	5
[7]	Schedule 5	6
	Insert after Schedule 4:	7
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	Schedule 5 Special provisions applying for period of Sydney Olympic Games	11
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	(Sections 5, 138)	13
	Part 1 Preliminary	14
	1 Definitions	15
	In this Schedule, except in so far as the context or subject-matter otherwise indicates or requires:	16
		17
	<i>premises ordinarily the subject of a residential tenancy agreement</i> means premises, or any part of premises, which have been the subject of a residential tenancy agreement at any time during the 12 months prior to a new residential tenancy agreement to which this Schedule applies being entered into.	18
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	<i>previous residential tenancy agreement</i> means the last residential tenancy agreement to which the premises were subject.	24
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	<i>Rent Report</i> means the <i>Rent and Sales Report NSW</i> published by the Department of Urban Affairs and Planning (or another publication prescribed by the regulations).	27
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	<i>Sydney Statistical Division</i> means those government areas defined by the Australian Bureau of Statistics as comprising the Sydney Statistical Division, and includes local government areas that may be included in the Sydney Statistical Division after the commencement of this Schedule.	30
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2 Application of Schedule	1
(1) The provisions of this Schedule apply to:	2
(a) new residential tenancy agreements made:	3
(i) on or after 1 June 1999, and	4
(ii) before 1 January 2002 or such later date as may be prescribed by the regulations, and	5
(iii) for the occupation of residential premises situated within the Sydney Statistical Division or such other geographical areas as may be prescribed by the regulations, and	6
(b) existing residential tenancy agreements made before 1 June 1999 for the occupation of residential premises situated within the Sydney Statistical Division or such other geographical areas as may be prescribed by the regulations.	7
(2) This Schedule ceases to have effect on 1 January 2002 or such later date as may be prescribed by the regulations.	8
3 Certain sections not to apply	9
Sections 46, 48, 56, 57, 58 and 60 (and any other prescribed provision of this Act) do not apply to a residential tenancy agreement to which this Schedule applies.	10
Part 2 Setting of rents	11
4 Setting of rents	12
The rent payable under any residential tenancy agreement to which this Schedule applies must be determined in accordance with this Part.	13
5 Rent for premises ordinarily the subject of a residential tenancy agreement	14
(1) The rent payable for occupation of premises ordinarily the subject of a residential tenancy agreement must not exceed:	15
(a) the rent payable under the previous residential tenancy agreement, or	16

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- (b) if the previous residential tenancy agreement was terminated more than 3 months before the date on which the residential tenancy agreement is made, the rent payable under the previous residential tenancy agreement adjusted to reflect changes in the Consumer Price Index (All Groups—Sydney) since the date the previous agreement was terminated. 1
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 - (2) The landlord must, in accordance with the regulations, certify the rent payable under the previous residential tenancy agreement in the form prescribed by the regulations at the commencement of the residential tenancy agreement. 8
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 - 6 Rents for premises not ordinarily the subject of a residential tenancy agreement** 12
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 - (1) The landlord may have regard to the following factors when determining the rent payable for occupation of premises not ordinarily the subject of a residential tenancy agreement: 14
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 - (a) the general market level of rents for comparable premises in the locality or a similar locality, 17
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 - (b) the value of the residential premises, 19
 - (c) the amount of any outgoings in respect of the residential premises required to be borne by the landlord under the proposed residential tenancy agreement, 20
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 - (d) the estimated cost of any services provided by the landlord or the tenant under the proposed residential tenancy agreement, 24
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 - (e) the value and nature of any fittings, appliances or other goods, services or facilities provided with the residential premises, 27
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 - (f) the accommodation and amenities provided in the residential premises and the state of repair and general condition of the premises, 30
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 - (g) any work done to the premises by or on behalf of the tenant, to which the landlord has consented, 33
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 - (h) data published in the Rent Report, 35
 - (i) any other relevant matter. 36

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- (2) The landlord must, in accordance with the regulations, certify at the commencement of the tenancy that regard has been had to the factors specified in subclause (1) when determining the rent for premises. This certification must be in the form prescribed by the regulations. 1
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- 7 Power of Tribunal to determine rents** 6
- (1) A tenant who has entered into a residential tenancy agreement for occupation of premises not ordinarily the subject of a residential tenancy agreement may apply to the Tribunal for an order that the rent for the premises is excessive. 7
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- (2) The tenant may make an application to the Tribunal under this clause not later than 90 days after the date that the residential tenancy agreement was made. 12
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- (3) The Tribunal, in determining whether a rent payable under a residential tenancy agreement is excessive, may have regard to the following factors: 15
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- (a) the general market level of rents for comparable premises in the locality or a similar locality, 18
19
- (b) the value of the residential premises, 20
- (c) the amount of any outgoings in respect of the residential premises required to be borne by the landlord under the residential tenancy agreement, 21
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- (d) the estimated cost of any services provided by the landlord or the tenant under the residential tenancy agreement, 24
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- (e) the value and nature of any fittings, appliances or other goods, services or facilities provided with the residential premises, 27
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- (f) the accommodation and amenities provided in the residential premises and the state of repair and general condition of the premises, 30
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- (g) any work done to the premises by or on behalf of the tenant, to which the landlord has consented, 33
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- (h) data published in the Rent Report, 35
- (i) any other relevant matter. 36
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(4)	In an application under this clause, the landlord bears the onus of proof.	1 2
8	Orders as to excessive rents	3
(1)	The Tribunal may, on application by a tenant under clause 7, and after considering any matters it considers appropriate under clause 7 (3), make an order determining that a rent is excessive.	4 5 6 7
(2)	If the Tribunal determines that a rent is excessive, the Tribunal may order that from a day specified by the Tribunal, not being earlier than the commencement of the residential tenancy agreement, the rent must not exceed an amount specified by the Tribunal and may make such other orders as it thinks fit.	8 9 10 11 12 13
Part 3	Rent increases	14
9	Frequency of rent increases	15
	The rent payable under a residential tenancy agreement to which this Schedule applies must not be increased more than once in any 12-month period.	16 17 18
10	Method of calculating rent increases	19
(1)	Except by order of the Tribunal, rents must not be increased by more than the lesser of the following:	20 21
(a)	the increase in the Consumer Price Index (All Groups—Sydney) published by the Australian Bureau of Statistics between the quarter immediately preceding when the current rent was set and the quarter immediately preceding the time when the notice of the rent increase is served, or	22 23 24 25 26 27
(b)	20 per cent of the current rent.	28
(2)	The regulations may contain provisions for the purpose of giving effect to any of the provisions of subclause (1).	29 30

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11 Power of Tribunal to determine amount of rent increase	2
(1) A landlord may apply to the Tribunal for an order that permits a rent increase in excess of the increase permitted under clause 10.	3 4 5
(2) The Tribunal may, in determining the amount of a rent increase, have regard to the following factors:	6 7
(a) the general market level of rents for comparable premises in the locality or a similar locality,	8 9
(b) the value of the residential premises,	10
(c) the amount of any outgoings in respect of the residential premises required to be borne by the landlord under the residential tenancy agreement,	11 12 13
(d) the estimated cost of any services provided by the landlord or the tenant under the residential tenancy agreement,	14 15 16
(e) the value and nature of any fittings, appliances or other goods, services or facilities provided with the residential premises,	17 18 19
(f) the accommodation and amenities provided in the residential premises and the state of repair and general condition of the premises,	20 21 22
(g) any work done to the premises by or on behalf of the tenant, to which the landlord has consented,	23 24
(h) data published in the Rent Report,	25
(i) any other relevant matter.	26
(3) In an application under this clause, the landlord bears the onus of proof.	27 28
12 Orders as to rent increases	29
(1) The Tribunal may, on application by a landlord under clause 11, and after considering any matters it considers appropriate under clause 11 (2), make an order permitting a rent increase in excess of that which would be permitted under clause 10.	30 31 32 33 34

- (2) The Tribunal must specify a day from which an order permitting a rent increase in excess of that which would be permitted under clause 10 takes effect. The day specified by the Tribunal must not be earlier than 60 days after the day of the Tribunal hearing.

Part 4 Termination

13 Notice of termination

- (1) A landlord or tenant must not be given a notice of termination of a residential tenancy agreement otherwise than in accordance with this Part.
- (2) A notice of termination may not be given under clause 14, 15 or 16 so as to terminate a residential tenancy agreement during the currency of a fixed term.

14 Notice of termination where premises sold

- (1) A landlord may give notice of termination of a residential tenancy agreement to the tenant on the ground that the landlord has (after entering into the agreement) entered into a contract for the sale of the residential premises under which the landlord is required to give vacant possession.
- (2) The notice of termination must not specify a day earlier than 60 days after the day on which the notice is given as the day on which vacant possession of the residential premises is to be delivered up to the landlord.

15 Notice of termination by landlord for conversion, major renovation, change of use or demolition of premises

- (1) A landlord may give notice of termination of a residential tenancy agreement to the tenant on the ground that the landlord proposes:
- (a) to carry out major renovations to the residential premises that are not possible without vacant possession, or
 - (b) to change the use of the residential premises to a non-residential use, or
 - (c) to demolish the residential premises.

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| (2) | The notice of termination must not be given unless the landlord has obtained all approvals and consents (and any other authorities) necessary to give effect to the proposal. | 1
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| (3) | The notice of termination must not specify a day earlier than 90 days after the day on which the notice is given on which vacant possession of the residential premises is to be delivered up to the landlord. | 4
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| 16 | Notice of termination by landlord—use of premises as principal residence | 8
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| (1) | A landlord may give notice of termination of a residential tenancy agreement for a fixed term on the ground that the landlord requires the premises for the principal place of residence of the landlord or a relative of the landlord. | 10
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| (2) | The notice of termination must not specify a day earlier than 30 days after the day on which the notice is given as the day on which vacant possession is to be delivered up to the landlord. | 14
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| (3) | The notice may be given to the tenant before the end of the term of the agreement and may specify a termination date that is the date of, or a date after, the end of the term. | 18
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| (4) | In this clause:
<i>relative</i> of a landlord means any of the following: | 21
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| (a) | the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the landlord or of the landlord's spouse, | 23
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| (b) | the spouse of the landlord or of a person referred to in paragraph (a). | 26
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| | <i>spouse</i> includes a de facto partner as defined in the <i>De Facto Relationships Act 1984</i> . | 28
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| 17 | Notice of termination by landlord on ground of breach of agreement (other than arrears of rent) | 30
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| (1) | If a tenant has breached a residential tenancy agreement (otherwise than in relation to the payment of rent), the landlord may give notice to the tenant to remedy the breach within a period of not less than 30 days after the date on which the notice is given to the tenant. | 32
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- (2) A landlord may give a notice of termination of a residential tenancy agreement to the tenant on the ground that the tenant has failed to remedy a breach of the agreement within the period specified by a notice under subclause (1). 1
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- (3) The notice of termination under subclause (2) must not specify a day earlier than 14 days after the day on which the notice is given as the day on which vacant possession of the residential premises is to be delivered up to the landlord. 5
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- (4) If the tenant remedies the breach specified in the notice under subclause (1) before the day specified in the notice of termination, the notice of termination ceases to have effect and no further notice of termination may be given in respect of that breach. 9
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- (5) Despite the foregoing provisions of this clause, if a tenant has breached a residential tenancy agreement (otherwise than in relation to the payment of rent) and the breach is of the same nature as that for which a notice has been given under subclause (1) within the previous period of 3 months, and the breach is serious, the landlord may give a notice of termination of the residential tenancy agreement. 14
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- (6) The notice of termination under subclause (5) must not specify a day earlier than 14 days after the day on which the notice is given as the day on which vacant possession of the residential premises is to be delivered up to the landlord. 21
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- 18 Notice of termination by landlord—arrears of rent 25**
- (1) If a tenant has failed to pay rent in accordance with the residential tenancy agreement, the landlord may give notice to the tenant to pay the arrears of rent within a period of not less than 14 days after the date on which the notice is given to the tenant. 26
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- (2) A landlord may give a notice of termination of a residential tenancy agreement to the tenant on the ground that the tenant has failed to remedy a breach of the agreement within the period specified by a notice under subclause (1). 31
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- (3) The notice of termination must not specify a day earlier than 14 days after the day on which the notice is given as the day on which vacant possession of the residential premises is to be delivered up to the landlord. 35
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(4)	If the tenant pays all arrears of rent to which a notice under subclause (1) applies before the day specified in the notice of termination, the notice of termination ceases to have effect and no further notice of termination may be given in respect of those arrears.	1 2 3 4 5
19	Notice of termination at end of fixed term agreement without any ground	6 7
(1)	A tenant may give notice of termination of a residential tenancy agreement that creates a tenancy for a fixed term during the currency of the term without specifying any ground for the termination.	8 9 10 11
(2)	A notice of termination given under this clause must not specify a day earlier than 14 days after the day on which the notice is given or the day the term of the residential tenancy agreement ends, whichever is the later, as the day on which vacant possession of the residential premises is to be or will be delivered up.	12 13 14 15 16 17
(3)	This clause does not apply to residential premises to which a relevant code of practice applies, being premises consisting of a site on which:	18 19 20
(a)	a relocatable home, or	21
(b)	a registrable moveable dwelling with a rigid annexe attached to it,	22 23
	(not being a home or dwelling provided by the landlord) is situated or proposed to be situated.	24 25
Part 5	Miscellaneous	26
20	Offences and penalties	27
(1)	A person who knowingly contravenes or fails to comply with a provision set out below is guilty of an offence and is liable to a penalty specified in relation to that provision:	28 29 30
	Clause 5 (2)—20 penalty units	31
	Clause 6 (2)—20 penalty units.	32
(2)	Subclause (1) has effect despite section 125 (2).	33

21 Landlord and Tenant (Rental Bonds) Act 1977	1
(1) The provisions of section 9 (2) (b) of the <i>Landlord and Tenant (Rental Bonds) Act 1977</i> do not apply to:	2
(a) the demand of an amount of money that would, if deposited or paid, be a rental bond, or	3
(b) the receipt of a rental bond,	4
in respect of a lease of furnished premises for which the weekly rental is \$1000 (or such higher amount as is prescribed by regulations under that Act) or more.	5
(2) The regulations under the <i>Landlord and Tenant (Rental Bonds) Act 1977</i> may prescribe amounts for the purposes of subclause (1).	6
(3) Words and expressions used in this clause have the same meanings as in the <i>Landlord and Tenant (Rental Bonds) Act 1977</i> .	7
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