



New South Wales

# Residential Tenancies and Housing Legislation Amendment (Public Housing— Antisocial Behaviour) Bill 2015

## 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* to:

- (a) introduce a scheme for social housing providers to record strikes against tenants for breaches of social housing tenancy agreements and to seek a termination order on the basis of 3 or more breaches occurring within 12 months that, taken together, justify termination, and
- (b) require the Civil and Administrative Tribunal, on application of a social housing provider, to make a termination order for breach of a social housing tenancy agreement involving the premises being used for certain serious offences including drug manufacture or supply, storing a firearm for which a licence or permit is not held and violence involving grievous bodily harm, and
- (c) require the Tribunal, on application of a social housing provider, to make a termination order for breach of a social housing tenancy agreement in certain other cases unless the tenant satisfies the Tribunal that there are exceptional circumstances justifying the order not being made, and
- (d) introduce a scheme for the submission of neighbourhood impact statements to assist the Tribunal to understand the effect a social housing tenancy has had on neighbouring residents and other persons, and
- (e) allow social housing tenancy agreements to be terminated for non-payment of amounts owed as a consequence of variation or cancellation of rent rebates, and
- (f) limit the period within which an order for possession of social housing premises is to take effect, and

- (g) provide social housing providers with certain evidentiary aids in proceedings before the Tribunal.

The Bill also amends the *Housing Act 2001* to:

- (a) provide the NSW Land and Housing Corporation with additional powers to gather information for the purposes of preventing or investigating fraud against the Corporation, and
- (b) extend the prosecution period for certain offences.

## 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 by proclamation.

## Schedule 1      **Amendment of Residential Tenancies Act 2010 No 42**

**Schedule 1 [2]–[7]** amend Division 5 of Part 7 of the *Residential Tenancies Act 2010* (the *principal Act*) which deals with termination of social housing tenancy agreements by making a minor modification to the heading of the Division (because the Division as amended will relate to grounds for termination under Part 5 of the principal Act as well as additional grounds), restructuring the Division into Subdivisions for the existing eligibility ground, alternative premises ground and behaviour ground and omitting section 152 in preparation for a modified form of that section to be included in new Subdivision 4 (see proposed section 154E). **Schedule 1 [1]** is a consequential amendment.

**Schedule 1 [8]** inserts 2 new Subdivisions in Division 5 of Part 7 of the principal Act, one dealing with termination on the ground of breach of a social housing tenancy agreement and the other with miscellaneous matters.

Proposed section 154A extends the existing scheme for termination of a tenancy for non-payment of rent to non-payment of an amount owed as a consequence of the variation or cancellation of a rent rebate (that is, where a rebate is reduced or cancelled with effect from a preceding date). As with rent, the tenant may enter into a repayment scheme and the breach of the agreement may be remedied by full payment of the amount owed.

Proposed section 154B is designed to ensure that where a tenant has moved from one social housing premises to another, breaches under any earlier social housing tenancy agreement continue to be relevant to the question of whether the current agreement should be terminated for a breach. It ensures that a series of breaches of social housing tenancy agreements with the same or a different landlord may be considered to justify termination of an agreement even though, taken alone, the circumstances of each breach would not justify termination of an agreement.

Proposed section 154C provides for a scheme for the recording of strikes against a tenant for breaches of social housing tenancy agreements that, taken alone, do not justify termination of the agreement. The strikes follow the tenant rather than the premises and so remain relevant even if a tenant moves from one social housing premises to another. Under the scheme, the tenant is required to be given a notice that sets out details of the alleged breach of the agreement for which the strike is recorded, an opportunity to make submissions to the landlord if the tenant disagrees with those details or any aspect of those details and, if the strike is not then withdrawn, an opportunity to apply for review of the notice. Proposed section 156A effectively provides that the tenant will be taken to have agreed the details set out in the notice if no submissions are made.

Under the scheme, on a third strike within 12 months, the landlord may, instead of issuing a strike notice, give a termination notice under section 87 of the principal Act on the basis that the landlord is satisfied that a series of breaches by the tenant of the agreement or any prior social housing tenancy agreement with the same or a different landlord justifies termination of the agreement with the tenant.

The new scheme does not derogate from the ability of the landlord to give a termination notice for a serious breach of a social housing agreement that in its own right justifies termination of the agreement.

Proposed section 154D deals with how termination under section 90 or 91 is to work in the case of social housing tenancies. It requires the Tribunal to make, on the application of a social housing provider, a termination order for a social housing tenancy agreement in certain cases, namely:

- (a) 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 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 and the injury constitutes grievous bodily harm within the meaning of the *Crimes Act 1900* (see section 90 (1) (b) of the principal Act), or
- (b) 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 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 *Drug Misuse and Trafficking Act 1985* (see section 91 (1) (a) of the principal Act), or
- (c) if it is satisfied that the tenant, or any person who although not a tenant is occupying or jointly occupying the social housing premises, has intentionally or recklessly caused or permitted the social housing 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) to be used for the purposes of:
  - storing a firearm for which a licence or permit is not held under the *Firearms Act 1996*, or
  - a show cause offence within the meaning of the *Bail Act 2013*,and the tenant or other person has been charged with an offence relating to those circumstances, whether or not the person is or has been found guilty of the offence (see section 91 (1) (b) of the principal Act as modified by proposed section 154D (3)).

The proposed section also requires the Tribunal to make, on the application of a social housing provider, a termination order for a social housing tenancy agreement in certain other cases unless the tenant satisfies the Tribunal that there are exceptional circumstances that justify the order not being made, namely:

- (a) 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 serious damage to the residential premises or any neighbouring property (including any property available for use by the tenant in common with others) or injury (other than grievous bodily harm) 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 (see section 90 (1) of the principal Act), or
- (b) 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 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) to be used:
  - unlawfully as a brothel within the meaning of the *Restricted Premises Act 1943*, or
  - for the purposes of an offence against section 91H (Production, dissemination or possession of child abuse material) of the *Crimes Act 1900*, or

- for the purposes of an offence against section 154G (Facilitating organised car or boat rebirthing activities) of the *Crimes Act 1900*,  
(see section 91 (1) (b) of the principal Act as modified by proposed section 154D (3)), or
- (c) if it is satisfied that the tenant, or any person who although not a tenant is occupying or jointly occupying the social housing premises, has intentionally or recklessly caused or permitted the social housing 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) to be used for any other unlawful purpose and that the use is sufficient to justify the termination (see section 91 (1) (b) of the principal Act as modified by proposed section 154D (3)).

If the Tribunal is satisfied by the tenant that there are exceptional circumstances and does not make a termination order, the proposed section requires the Tribunal to provide written reasons for the decision.

Proposed section 154E lists factors that must be taken into account by the Tribunal in determining whether to make a termination order for a social housing tenancy agreement. These include the factors currently set out in section 152 of the principal Act and, in addition, the history of the current tenancy and any prior tenancy arising under a social housing tenancy agreement with the same or a different landlord.

One of the factors currently set out in section 152 is the effect the tenancy has had on neighbouring residents or other persons. Proposed section 154F supports that factor by requiring the Tribunal to have regard to any neighbourhood impact statement submitted by a social housing landlord. This is a summary of relevant statements made by neighbouring residents or other persons and avoids those persons having to be identified or appear before the Tribunal.

The amendments insert a miscellaneous Subdivision at the end of Division 5 of Part 7 of the principal Act to house the current provision dealing with the operation of the Division and the following proposed provision.

Proposed section 154G prevents the Tribunal fixing a period for the tenant to vacate social housing premises on the making of a termination order that extends beyond 28 days unless there are exceptional circumstances. It does not derogate from the power of the Tribunal to require the premises to be vacated immediately.

**Schedule 1 [9]** inserts a new Division in Part 7 of the principal Act dealing with evidentiary certificates.

Proposed section 156A provides an evidentiary aid relating to a strike notice. If, in proceedings before the Tribunal, the Tribunal is satisfied that the tenant was issued a strike notice and did not make submissions as allowed for in the strike notice, a certificate setting out the details of the alleged breach of a social housing tenancy agreement set out in the strike notice constitutes conclusive proof of those details. This does not prevent argument about whether the agreed facts constitute a breach of the agreement.

Proposed section 156B provides that the Tribunal must accept as the reasonable cost of work undertaken by a landlord on or in connection with social housing premises an amount set out in a certificate submitted by the landlord. This does not prevent argument about whether the work was necessary as a consequence of the breach of an agreement by a tenant.

**Schedule 1 [10]** inserts a new section at the end of the principal Act requiring new sections 154D and 154G (as proposed to be inserted) to be reviewed after 2 years.

## **Schedule 2     Amendment of Housing Act 2001 No 52**

**Schedule 2 [1]** inserts a new section in the *Housing Act 2001* to enable the New South Wales Land and Housing Corporation to give a person, for the purposes of preventing or investigating fraud against the Corporation, a written notice requiring the person to provide information, produce documents or appear before a person to give evidence and produce documents, as specified in the

notice. The proposed provision preserves the privilege against self-incrimination, legal professional privilege and refusal on the grounds of public interest.

**Schedule 2 [2]** amends section 74 of the *Housing Act 2001* by extending the prosecution period for an offence against section 69 (False statements and representations) or 69A (Failure to notify of change of circumstances) to 12 months from when evidence of the alleged offence first came to the attention of a member of the staff of the Corporation.