



New South Wales

Residential Tenancies Amendment (Social Housing) Bill 2018

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* and the *Housing Act 2001* as follows:

- (a) to enable the New South Wales Land and Housing Corporation (the *Corporation*) and the Aboriginal Housing Office (the *AHO*) to require a tenant to pay a rental bond at any time after a residential tenancy agreement has commenced (if a bond was not paid at the beginning of the agreement),
- (b) to provide for guidelines approved by the Minister for Social Housing to specify the classes of tenants in Corporation and AHO residential tenancy agreements who may be required to pay a rental bond during an agreement and to provide for the amount of rental bond payable,
- (c) to provide that the Corporation and the AHO may give a tenant a termination notice, and the New South Wales Civil and Administrative Tribunal (*NCAT*) may order the termination of a Corporation or AHO residential tenancy agreement, if the tenant fails to pay all or part of a rental bond, whether the bond was required to be paid at the beginning or during the agreement,
- (d) to provide that a tenant in a Corporation or AHO residential tenancy agreement who pays the outstanding rental bond or enters into a repayment plan, after being given a termination notice or order, will not be required to vacate the premises and the residential tenancy agreement will not be terminated,
- (e) to require NCAT to terminate a Corporation residential tenancy agreement if the tenant has been found guilty of a fraud offence under section 69 or 69A of the *Housing Act 2001* unless there are exceptional circumstances,

- (f) to enable certain community housing providers to terminate a residential tenancy agreement of a tenant who is a registrable person (within the meaning of the *Child Protection (Offenders Registration) Act 2000*) in the same way as the Secretary of the Department of Family and Community Services (the **FaCS Secretary**) is able to terminate a residential tenancy agreement of a public housing tenant who is a registrable person,
- (g) to provide that the residential tenancy agreement of a registrable person may only be terminated by a community housing provider on the recommendation of the Commissioner of Police and with the approval of the FaCS Secretary,
- (h) to require alternative housing to be made available to the registrable person,
- (i) to update offences relating to public housing tenant fraud and to extend the offences so that they apply to fraud arising in relation to rental subsidies or other benefits paid by the FaCS Secretary to tenants who are not in public housing,
- (j) to give the FaCS Secretary access to information and investigative powers for the purposes of preventing and investigating fraud against the FaCS Secretary, similar to the Corporation's existing powers,
- (k) to enable the FaCS Secretary to recover any rental subsidy or other benefit paid to a person if the person was not entitled to the rental subsidy or other benefit because it was obtained by fraud,
- (l) to make other minor and consequential amendments.

The Bill also makes a consequential amendment to the *Residential Tenancies Regulation 2010* to enable the Corporation and AHO to collect rental bonds from tenants without having to use the online rental bond service established by the Commissioner for Fair Trading.

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 to the proposed Act.

Schedule 1 Amendment of Residential Tenancies Act 2010 No 42

Termination of Corporation tenancy agreements if tenant found guilty of fraud under Housing Act 2001

Schedule 1 [1] provides that NCAT must make an order terminating a social housing tenancy agreement under which the landlord is the Corporation if the tenant has been found guilty of an offence under section 69 or 69A of the *Housing Act 2001*. Those sections prohibit a person from making a false or misleading statement, acting fraudulently or failing to notify the Corporation or the FaCS Secretary of a relevant change in circumstances, in relation to claiming any accommodation, rental rebate, rental subsidy or other benefit from the Corporation or the FaCS Secretary. See Schedule 2 [10]–[15] for related amendments to those sections.

NCAT must make a termination order on an application by the landlord, but is not required to make an order if the tenant satisfies NCAT that there are exceptional circumstances. Before making an application, the landlord must notify the tenant in writing but is not required to give the tenant a termination notice.

Rental bonds in Corporation and AHO tenancy agreements

Schedule 1 [2] makes further provision for rental bonds in social housing tenancy agreements where the landlord is the Corporation or the AHO. Currently, a landlord in any residential tenancy agreement, including a social housing tenancy agreement, can require the tenant to pay a rental bond at the time the agreement is entered into. Proposed section 156D enables the Corporation and the AHO to require a tenant to pay a rental bond at any time after the agreement has

commenced. The provisions of the *Residential Tenancies Act 2010* that apply in respect of a rental bond payable at the time a residential tenancy agreement is entered into apply in the same way to a rental bond required to be paid by a tenant in a Corporation or AHO social housing tenancy agreement at a later time.

A tenant in a Corporation or AHO social housing tenancy agreement may be required to pay a rental bond during the agreement only if a rental bond was not paid at the beginning of the agreement and if the tenant belongs to a class of tenant specified in guidelines approved by the Minister for Social Housing. A tenant is to be given, at least 14 days before the due date, written notice of the rental bond amount and the day by which it is to be paid. The amount of rental bond payable is to be determined in accordance with the guidelines.

Provisions relating to the non-payment of rent in a residential tenancy agreement will apply, so that a termination notice given by the Corporation or the AHO for non-payment of a rental bond may only be given if the rental bond is more than 14 days overdue. A termination notice must inform the tenant that if the outstanding rental bond is paid, or if the tenant enters into, and complies with, a repayment plan agreed with the Corporation or the AHO, the tenant will not be required to vacate the premises. NCAT may not make a termination order if the tenant pays the outstanding rental bond, or enters into, and complies with, a repayment plan.

Proposed section 156C enables the Corporation and the AHO to give a notice terminating the social housing tenancy agreement to a tenant who fails to pay all or part of a rental bond, whether the bond was required to be paid at the time the tenant entered into the agreement or at a later time.

Schedule 1 [3] is a consequential amendment.

Savings and transitional provisions

Schedule 1 [4] enables savings and transitional regulations to be made as a consequence of the proposed Act or any other Act that amends the *Residential Tenancies Act 2010*.

Schedule 1 [5] contains savings and transitional provisions.

Schedule 2 Amendment of Housing Act 2001 No 52

Termination of social housing leases of registrable persons

Schedule 2 [1] and [2] extend a provision that enables the FaCS Secretary to terminate the lease of a public housing tenant who is a registrable person (within the meaning of the *Child Protection (Offenders Registration) Act 2000*) so that community housing providers approved by the Minister that are landlords under a concurrent lease with the Corporation may also terminate the lease of a registrable person in the same way. A community housing provider may terminate a lease only on the recommendation of the Commissioner of Police and with the approval of the FaCS Secretary.

Schedule 2 [6] and [7] provide that alternative housing is to be made available to registrable persons whose social housing tenancy agreements are terminated.

Schedule 2 [8] and [9] extend the provisions that apply to the exercise of functions by the FaCS Secretary and the Commissioner of Police in relation to terminating the lease of a registrable person, so that they apply to a community housing provider who terminates the lease of a registrable person in the same way. No compensation will be payable and the exercise of functions by a community housing provider cannot be challenged or reviewed before a court or administrative review body.

Schedule 2 [3]–[5] are consequential amendments.

Fraud offences

Schedule 2 [10] updates the offence of making a false statement in relation to obtaining benefits from the Corporation and extends it to benefits (such as a rental subsidy) paid by the FaCS Secretary. **Schedule 2 [12]** defines *benefit* to mean any accommodation, rental rebate, rental subsidy or any other advantage or concession. The updated offence makes a person guilty of an offence if the person makes a statement knowing that the statement is false or misleading or omits

something without which the statement is misleading and if the statement is made to obtain or claim a benefit from the Corporation or the FaCS Secretary, to deceive a member of the staff of the Corporation or FaCS or to affect the rate or amount of a benefit. The maximum penalty remains imprisonment for 3 months or 20 penalty units (currently, \$2,200) or both.

Schedule 2 [11] extends the offence of obtaining a benefit from the Corporation by fraud so that it applies to obtaining a rental subsidy or other benefit from the FaCS Secretary. The maximum penalty is imprisonment for 3 months or 20 penalty units (currently, \$2,200) or both.

Schedule 2 [13] extends the offence of failing to notify the Corporation of any change of relevant circumstances within 28 days, with the intention of retaining or continuing to obtain a benefit, so that it applies in relation to rental subsidies and other benefits paid by the FaCS Secretary. **Schedule 2 [14] and [15]** are consequential amendments.

Power to investigate fraud

Schedule 2 [16] gives the FaCS Secretary the same access to information that the Corporation has in relation to fraud against the Corporation. For the purposes of preventing or investigating fraud, the FaCS Secretary may request, collect, use and disclose certain information, including personal information and information in relation to driver licences, registrable vehicles and property. **Schedule 2 [17] and [18]** are consequential amendments.

Schedule 2 [19] gives the FaCS Secretary the same investigative powers that the Corporation has in relation to fraud against the Corporation. The FaCS Secretary may, in certain circumstances, require a person to provide information, produce documents or give evidence for the purposes of preventing or investigating fraud against the FaCS Secretary. A person who fails to comply with such a requirement is guilty of an offence (maximum penalty 20 penalty units, currently \$2,200). **Schedule 2 [20] and [21]** are consequential amendments.

Proceedings for fraud offences

Schedule 2 [24] provides that proceedings for fraud offences in relation to rental subsidies or other benefits paid by the FaCS Secretary are to be dealt with summarily before the Local Court and are to be instituted by the FaCS Secretary. Other offences against the *Housing Act 2001* are also dealt with summarily by the Local Court but are instituted by the Corporation. **Schedule 2 [23] and [25]** are consequential amendments.

Recovery of amounts due to FaCS Secretary

Schedule 2 [22] enables the FaCS Secretary to recover any rental subsidy or other benefit paid to a person if the person was not entitled to the rental subsidy or other benefit because it was obtained by fraud.

Savings and transitional provisions

Schedule 2 [26] contains savings and transitional provisions.

Schedule 3 Amendment of Residential Tenancies Regulation 2010

Schedule 3 exempts the Corporation and the AHO from having to use the online rental bond service established by the Commissioner for Fair Trading under the *Residential Tenancies Act 2010* in relation to rental bonds received from their tenants.