



New South Wales

Residential Tenancies Amendment (Review) 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* (*the Act*) to give effect to recommendations of the statutory review of the Act contained in the report, *Residential Tenancies Act 2010—Statutory Review*, dated 17 June 2016. The amendments made by this Bill relate to the following matters that were the subject of the recommendations:

- (a) the application of termination notice provisions to employee or caretaker residential tenancy agreements,
- (b) disclosure obligations imposed on landlords in relation to strata schemes,
- (c) obligations imposed on landlords in relation to information statements,
- (d) interest on rental bonds and the purposes for which grants or loans can be made from Rental Bond Interest Account moneys,
- (e) taking photographs or making videos of residential premises,
- (f) condition reports,
- (g) the concept of “separately metered” premises,
- (h) notice requirements for rent increases,
- (i) obligations imposed on landlords in relation to repairs,
- (j) compensation payable for abandonment of residential premises,
- (k) the termination of residential tenancy agreements by landlords on the grounds of non-payment of rent, water usage charges or charges for the supply of electricity, gas or oil,

- (l) the termination of residential tenancy agreements by tenants or co-tenants in circumstances of domestic violence,
- (m) the liability of tenants or co-tenants for damage to residential premises caused by another person in circumstances of domestic violence,
- (n) the protection of personal information of tenants and co-tenants in circumstances of domestic violence,
- (o) fees charged by residential tenancy database operators.

The further objects of this Bill are to make certain other amendments to the Act, in addition to those recommended in the statutory review:

- (a) to limit the frequency of increases in rent payable under a periodic agreement to no more than once in any 12-month period, and
- (b) to specify the minimum requirements that must be met for residential premises to be fit for habitation, and
- (c) to allow landlords and tenants to request that the Commissioner for Fair Trading carry out investigations into damage to premises or breaches of obligations to repair premises, to allow the Commissioner to issue rectification orders and to give the Civil and Administrative Tribunal (the *Tribunal*) the power to issue termination notices for breaches of rectification orders, and
- (d) to provide a regulation-making power to prescribe the kinds of alterations of a minor nature in relation to which it would be unreasonable for a landlord to withhold consent, and
- (e) to give the Tribunal the power to issue termination notices for non-payment of rent or water usage charges, and
- (f) to apply different requirements for the termination of employee or caretaker tenancies, and
- (g) to allow early termination of fixed term agreements by tenants if the residential premises are placed on the Loose-fill Asbestos Insulation Register (the *LFAl Register*).

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 a day or days to be appointed by proclamation.

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

Schedule 1 [1] inserts definitions of *break fee*, *domestic violence offence* and *separately metered* into section 3 (1) of the Act.

Schedule 1 [2] inserts a new provision into section 26 of the Act requiring a landlord or landlord's agent to give to a prospective tenant of premises that comprise or include a lot in a strata scheme, before the tenant enters into a residential tenancy agreement, a copy of the by-laws for the strata scheme and to disclose that a strata renewal committee is currently established in relation to the strata scheme, if that is the case. **Schedule 1 [3]** makes a consequential amendment.

Schedule 1 [4] creates an offence (with a maximum penalty of \$2,200) for the failure of a landlord or landlord's agent to give 2 copies, or 1 electronic copy, of the completed condition report to the tenant before or at the time the tenant signs the residential tenancy agreement. **Schedule 1 [5] and [6]** make amendments requiring the tenant to complete and return the condition report not later than 7 days after taking possession of the residential premises (the *premises*), but only if the tenant has received the condition report from the landlord or landlord's agent in accordance with section 29.

Schedule 1 [7] creates an offence (with a maximum penalty of \$2,200) for the failure of a landlord or landlord's agent to sign an acknowledgment on a residential tenancy agreement that the landlord has read and understood the contents of a *rights and obligations information statement* before entering into the agreement. Proposed section 31A also creates an offence (with a maximum penalty of \$2,200) for the failure of a landlord's agent to sign the acknowledgment on the residential tenancy agreement unless the agent has first obtained from the landlord a statement in writing that the landlord has read and understood the contents of a rights and obligations information statement.

Schedule 1 [8] makes an amendment that allows rent receipts for rent paid by cheque to be sent by email to an email address specified by the tenant.

Schedule 1 [9] inserts 2 new provisions into section 41. Proposed section 41 (1A) provides that certain requirements that must be met before rent can be increased do not apply to a fixed term agreement for a fixed term of less than 2 years that specifies the date on which, and the amount by which, the rent payable under the agreement will be increased. Proposed section 41 (1B) provides that the rent payable under a periodic agreement may not be increased more than once in any 12-month period.

Schedule 1 [10] inserts a new provision into section 52 clarifying the circumstances in which residential premises would not be fit for habitation by a tenant.

Schedule 1 [11] inserts a new provision into section 54 to provide that vicarious liability for damage to premises caused by another person is not imposed on a tenant, or a co-tenant who is not the person who caused the damage, if the damage to the premises occurred during the commission of a domestic violence offence of which the tenant or co-tenant was the victim.

Schedule 1 [12] inserts a new provision into section 55 to allow landlords access to premises without the tenant's consent to take photographs, or make a visual recording, of the interior in order to advertise the premises for sale or lease. The landlord can exercise this right only once in a 28-day period preceding the commencement of marketing the premises for sale or lease or the termination of the residential tenancy agreement. The landlord must give the tenant reasonable notice and a reasonable opportunity to move any of the tenant's possessions that can reasonably be moved out of the frame of the photograph or the scope of the recording.

Schedule 1 [13] inserts proposed section 55A to provide that landlords or landlords' agents must not publish any photograph taken or visual recording made of the interior of premises in which any of the tenant's possessions are visible without first obtaining the written consent of the tenant. The tenant cannot unreasonably withhold consent. The tenant may reasonably withhold consent if the tenant is in circumstances of domestic violence, within the meaning of proposed section 105B (as inserted by **Schedule 1 [33]**).

Schedule 1 [14] inserts proposed section 64A to provide that only landlords can carry out repairs to smoke alarms, unless the regulations prescribe types of smoke alarms that can be repaired by a tenant, and the kinds of repairs that can be carried out by the tenant. Proposed section 64A also creates an offence (with a maximum penalty of \$2,200) for a failure by a landlord to carry out repairs to a smoke alarm in the manner, and within the time period, prescribed by the regulations. **Schedule 1 [15]** makes a consequential amendment.

Schedule 1 [16] substitutes section 65 (3) to provide that, in deciding whether to make an order that a landlord carry out specified repairs or reimburse a tenant for urgent repairs the tenant has carried out, the Tribunal must take into consideration any guidelines prescribed by the regulations relating to reasonable time frames to carry out repairs and maintenance. The Tribunal may also take into consideration whether the landlord has failed to act with reasonable diligence to have the repairs carried out. **Schedule 1 [17]** inserts a power to make regulations providing for the guidelines.

Schedule 1 [18] inserts proposed Division 5A into Part 3 allowing landlords and tenants to request that the Commissioner for Fair Trading, Department of Finance, Services and Innovation (the *Secretary*) carry out inquiries in relation to damage to premises by tenants or breaches of a

landlord's obligation under section 63 to provide and maintain residential premises in a reasonable state of repair. The Secretary may make rectification orders at the conclusion of an investigation. The Tribunal may make certain orders in relation to rectification orders on application by a landlord or tenant. **Schedule 1 [27]** provides that the Tribunal may make termination orders in relation to tenant rectification orders on application by a landlord.

Schedule 1 [19] inserts a new provision into section 66 enabling the regulations to prescribe the kinds of alterations of a minor nature in relation to which it would be unreasonable for a landlord to withhold consent, and which of those alterations must only be carried out by a person appropriately qualified to carry out alterations of that kind. Despite an alteration being prescribed as one that must only be carried out by a person appropriately qualified to carry out alterations of that kind, the landlord may consent to a tenant carrying out the alteration.

Schedule 1 [20] inserts a definition of *employee or caretaker residential tenancy agreement* into section 80 to apply to Part 5 of the Act (Termination of residential tenancy agreements).

Schedule 1 [21] inserts proposed section 85 (2A) to apply different requirements for the termination of employee or caretaker tenancies. The termination date specified in the termination notice must be on or after the end of the period of notice for termination agreed to by the landlord and the employee or caretaker in the relevant agreement or arrangement, or not earlier than 28 days after the day on which the notice is given, whichever is the later date. In the case of other fixed term tenancies, the termination date must be on or after the end of the fixed term and not earlier than 30 days after the day on which the notice is given. In the case of other periodic tenancies, the termination date must be not earlier than 90 days after the day on which the notice is given.

Schedule 1 [22] substitutes section 88 (1) to provide that a termination notice given by a landlord on the ground of the tenant's breach of the agreement arising solely from the tenant's failure to pay rent, water usage charges or charges for the supply of electricity, gas or oil has no effect unless the rent has, or other charges have, remained unpaid in breach of the agreement for not less than 14 days before the termination notice is given. **Schedule 1 [23]–[25]** make consequential amendments.

Schedule 1 [26] inserts new provisions into section 89 allowing the Tribunal to make a termination order if a tenant has frequently failed to pay either rent or water usage charges in accordance with section 39, or both. However, the Tribunal may only make a termination order on the basis of non-payment of water usage charges if the landlord has, on each relevant occasion, requested payment from the tenant within 3 months of the issue of the bill for those charges by the water supply authority.

Schedule 1 [28] inserts proposed section 98A, which provides that a tenant may give a termination notice if the landlord or the landlord's agent has contravened section 26. Section 26 prohibits the landlord or the landlord's agent from inducing a tenant to enter into an agreement by any false, misleading or deceptive statement, representation or promise or by knowingly concealing certain prescribed material facts and requires the landlord or the landlord's agent to disclose certain things to the tenant, and give the tenant an information statement, before the agreement is entered into.

Schedule 1 [29] inserts into section 100 a further ground on which a tenant may give a termination notice for a fixed term agreement, being that the premises have been listed on the LFAI Register during the term of the residential tenancy agreement, or were listed on the LFAI Register prior to the agreement being entered into and that fact was not disclosed to the tenant. **Schedule 1 [31]** inserts a definition for *LFAI Register*.

Schedule 1 [32] inserts proposed section 103A, which allows the Tribunal to make a termination order on the application of a tenant if a landlord has breached the landlord's obligations under section 26. The tenant may make an application under section 103A without giving the landlord a termination notice under section 98A.

Schedule 1 [33] inserts proposed Division 3A (Termination by tenant—circumstances of domestic violence) into Part 5 of the Act.

Under proposed section 105B, a tenant or co-tenant may give a **domestic violence termination notice** to the landlord and each other co-tenant, if any, if the tenant or co-tenant or an occupant who is the tenant or co-tenant's dependent child is in circumstances of domestic violence. A person is defined to be in **circumstances of domestic violence** if the person:

- (a) was the victim of a domestic violence offence for which a relevant domestic violence offender has been found guilty during the relevant tenancy, or
- (b) is protected by an in-force **DVO** (defined to include various local and interstate domestic violence orders and domestic violence foreign orders) made against the relevant domestic violence offender, or
- (c) is protected against **family violence** (within the meaning of the *Family Law Act 1975* of the Commonwealth) perpetrated by a relevant domestic violence offender by an in-force injunction granted under that Act, or
- (d) has been declared by a **competent person** (defined to mean a medical practitioner, within the meaning of the *Health Practitioner Regulation National Law (NSW)*) to be a victim of domestic violence perpetrated by a relevant domestic violence offender during the relevant tenancy.

Proposed section 105A defines **relevant domestic violence offender** to mean a co-tenant or occupant or former co-tenant or former occupant, or a person with whom the tenant or co-tenant giving the domestic violence termination notice has or has had a domestic relationship (within the meaning of the *Crimes (Domestic and Personal Violence) Act 2007*).

Proposed section 105C provides that the termination date specified in a domestic violence termination notice can be a date on or after the day on which the notice is given and, in the case of a fixed term agreement, before the end of the fixed term. The termination notice must have annexed to it a document relating to the conduct of the relevant domestic violence offender, being a copy of the relevant certificate of conviction, a copy of the relevant DVO, a copy of the relevant injunction or a declaration made by a competent person. To be qualified to provide a declaration, the competent person must have consulted with the victim of the domestic violence in the course of the competent person's professional practice. A declaration must be in the form, and contain the matters, prescribed by the regulations.

Proposed section 105D provides that if a co-tenant gives a domestic violence termination notice, the co-tenant ceases to be a tenant under the agreement on the specified termination date. Proposed section 105D also provides that the co-tenant giving the domestic violence termination notice is not liable to pay compensation for the early termination of a fixed term agreement. It also provides that a co-tenant who is not a relevant domestic violence offender and who continues to occupy the residential premises after a domestic violence termination notice is given is not liable to pay more than that co-tenant's share of the rent that was payable by the co-tenant immediately before the domestic violence termination notice was given for 2 weeks from the date on which the notice was given.

Proposed section 105E allows the Tribunal to make a termination order on application by a co-tenant of the co-tenant giving a domestic violence termination notice.

Proposed section 105F provides that, in any proceedings before the Tribunal, the contents of a declaration made by a competent person are not reviewable.

Proposed section 105G provides that the right to terminate an agreement or a co-tenancy under proposed Division 3A is in addition to other rights of a tenant or co-tenant to terminate an agreement or co-tenancy under any other provision of the Act.

Proposed section 105H creates an offence (with a maximum penalty of \$11,000 or imprisonment for 2 years, or both) for a person making a declaration under section 105C (2) (d) to provide false or misleading information.

Proposed section 105I provides for the operation of proposed Division 3A and sections 54 and 213A during the 3 years after the commencement of those provisions to be reviewed and a

report of the outcome of the review to be made publicly available within 12 months after the end of that 3-year period. A report on the operation of sections 55A, 71, 72, 79, 95, 174, 175, 187 and 202 is to be included in that report. Those provisions relate to, or have relevance for, the rights and obligations of landlords, tenants and co-tenants in the context of domestic violence. The review of sections 187 and 202 is limited to a review of the application of those sections to proceedings brought under proposed Division 3A or proceedings in which a party to the proceedings is in circumstances of domestic violence.

Schedule 1 [30] makes an amendment consequential on the insertion of proposed Division 3A of Part 5.

Schedule 1 [34] substitutes section 107 to provide a method of calculating the compensation payable to a landlord for any loss (including loss of rent) caused by a tenant's abandonment of residential premises in respect of which there was a fixed term agreement for a fixed term of not more than 3 years (the *break fee*).

Schedule 1 [35] amends section 186 (3) to provide that the Secretary may make a grant or loan from the Rental Bond Interest Account for other consumer protection purposes.

Schedule 1 [36] inserts a new provision in section 196 to give investigators powers of entry and other powers for the purposes of carrying out investigations under proposed section 65B or 65C.

Schedule 1 [37] provides that proceedings for an offence under proposed section 105H may only be instituted by or with the approval of the Director of Public Prosecutions.

Schedule 1 [38] creates an offence (with a maximum penalty of \$2,200) for a landlord or landlord's agent to list personal information about a tenant or a co-tenant in a residential tenancy database if that tenant or co-tenant terminated an agreement in circumstances of domestic violence.

Schedule 1 [39] creates an offence (with a maximum penalty of \$1,100) for a database operator to charge a fee for giving a copy of personal information that is in the residential tenancy database to a person whose personal information it is.

Schedule 1 [40] inserts a savings and transitional provision to exclude the application of section 107, as substituted by the Act, to agreements entered into before the substitution of the section.