



New South Wales

Residential Tenancies Amendment Bill 1998

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.
This Bill is cognate with the *Fair Trading Amendment Bill 1998*.

Overview of Bill

The object of this Bill is to amend the *Residential Tenancies Act 1987* as follows:

- (a) to clarify the circumstances in which a tenant is required to pay "user charges" (such as for the supply of electricity, gas and water),
- (b) to provide for the termination of a residential tenancy agreement where the tenant would otherwise suffer undue hardship,
- (c) to authorise the issuing of penalty notices for certain offences against the Act or the regulations,
- (d) to make consequential and other minor changes.

The Bill also makes a consequential amendment to the *Fines Act 1996*.

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.

Clause 3 is a formal provision giving effect to the amendments to the *Residential Tenancies Act 1987* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendment to the *Fines Act 1996* set out in Schedule 2.

Schedule 1 Amendment of Residential Tenancies Act 1987

Schedule 1 [1] amends section 19 to clarify the circumstances in which a landlord is to pay the user charges and any other prescribed charges under a residential tenancy agreement. The section further ensures that the liability to pay user charges of a kind prescribed by the regulations fall upon the landlord if the relevant services are not separately measured by a meter or other official measuring method.

Schedule 1 [2] makes a consequential amendment to section 69.

Schedule 1 [3] inserts proposed section 69A to allow a tenant to terminate a residential tenancy agreement where the tenant would suffer undue hardship if the agreement were not terminated, and describes the orders the Tribunal can make with respect to such a termination. The effect of the provision is to confer a right upon the tenant which was previously available only to the landlord under section 69.

Schedule 1 [4] inserts proposed new section 125A which authorises the issuing of penalty notices for prescribed offences against the Act or the regulations.

Schedule 1 [5] amends Schedule 4 to provide for the making of regulations of a savings or transitional nature as a consequence of amendments made by the proposed Act.

Schedule 1 [6] amends Schedule 4 to provide for savings and transitional provisions as a consequence of amendments made by the proposed Act.

Schedule 2 Amendment of Fines Act 1996

Schedule 2 consequentially amends the *Fines Act 1996* to allow penalty notices that are issued under the provision proposed to be inserted by Schedule 1 to the proposed Act, to be issued and enforced using the procedures set out in the *Fines Act 1996*.

First print



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New South Wales

Residential Tenancies Amendment Bill 1998

No. , 1998

A Bill for

An Act to amend the *Residential Tenancies Act 1987* in relation to charges payable by tenants, the termination of residential tenancy agreements, and penalty notices; and to make a consequential amendment to the *Fines Act 1996*.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Residential Tenancies Amendment Act 1998*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation. 5

3 Amendment of Residential Tenancies Act 1987 No 26

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

4 Consequential amendment of Fines Act 1996 No 99

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The *Fines Act 1996* is amended as set out in Schedule 2.

Schedule 1 Amendment of Residential Tenancies Act 1987

(Section 3)

[1] Section 19

Omit the section. Insert instead:

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19 Payment of rates, taxes and user charges

(1) In this section, *user charges* means:

(a) charges for electricity, gas or water supplied to residential premises, and

(b) any other charges prescribed by the regulations as user charges for the purposes of this section. 10

(2) It is a term of every residential tenancy agreement that the landlord is required to pay all rates, taxes or charges payable under any Act in connection with the residential premises (other than user charges that the agreement requires the tenant to pay). 15

(3) It is a term of every residential tenancy agreement that the landlord is required to pay user charges of a kind prescribed by the regulations for the purposes of this subsection, if the supply of the service concerned to the residential premises is not separately measured by a meter (or other method) authorised by the regulations. 20

[2] Section 69 Tribunal may terminate residential tenancy agreement where landlord would otherwise suffer undue hardship

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Omit section 69 (1). Insert instead:

(1) The Tribunal may, on application by a landlord under a residential tenancy agreement, make an order terminating the agreement if it is satisfied that the landlord would, in the special circumstances of the case, suffer undue hardship if the agreement were not terminated. 30

[3] Section 69A

Insert after section 69:

69A Tribunal may terminate residential tenancy agreement where tenant would otherwise suffer undue hardship

- (1) The Tribunal may, on application by a tenant under a residential tenancy agreement, make an order terminating the agreement if it is satisfied that the tenant would, in the special circumstances of the case, suffer undue hardship if the agreement were not terminated. 5
- (2) If the Tribunal makes an order terminating a residential tenancy agreement under this section, the Tribunal: 10
 - (a) is also to make an order for the repossession by the landlord of the residential premises specifying the day on which the order takes effect, and
 - (b) may make such other orders as it thinks fit (including an order that the tenant pay to the landlord compensation for the landlord's loss of the tenancy). 15

[4] Section 125A

Insert after section 125: 20

125A Penalty notices

- (1) An authorised officer may serve a penalty notice on a person if:
 - (a) it appears to the authorised officer that the person has committed an offence against this Act or the regulations, and 25
 - (b) the regulations prescribe the offence as being one for which a penalty notice may be issued.

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- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the penalty prescribed by the regulations for the offence if dealt with under this section. 5
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of the penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence. 10
- (5) Payment under this section is not an admission of liability for the purposes of, and does not affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (6) The regulations may: 15
- (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
 - (b) prescribe the amount of penalty for an offence if dealt with under this section, and 20
 - (c) prescribe different amounts of penalty for different offences or classes of offences.
- (7) The amount of penalty prescribed under this section for an offence may not exceed the maximum amount of penalty that could be imposed for the offence by a court. 25
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.
- (9) In this section, *authorised officer* means the Director-General of the Department of Fair Trading, or a person authorised in writing by the Director-General as an authorised officer for the purposes of this section. 30
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Residential Tenancies Amendment Bill 1998

Schedule 1 Amendment of Residential Tenancies Act 1987

[5] Schedule 4 Savings, transitional and other provisions consequent an enactment of amending legislation

Insert at the end of clause 1 (1):

Residential Tenancies Amendment Act 1998

[6] Schedule 4, Part 4

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Insert after Part 3:

Part 4 Provisions consequent on the enactment of Residential Tenancies Amendment Act 1998

6 Application of certain amendments

- (1) An amendment made by the *Residential Tenancies Amendment Act 1998*, does not apply in respect of a residential tenancy agreement entered into before the commencement of that amendment. 10
- (2) Despite subclause (1), the amendment made to section 69 in the *Residential Tenancies Amendment Act 1998*, extends to a residential tenancy agreement entered into before the amendment commences. 15
- (3) Despite subclause (1), section 69A, as inserted by the *Residential Tenancies Amendment Act 1998*, extends to a residential tenancy agreement entered into before the section commences. 20

Residential Tenancies Amendment Bill 1998

Consequential amendment of Fines Act 1996

Schedule 2

Schedule 2 Consequential amendment of Fines Act 1996

(Section 4)

Schedule 1 Statutory provisions under which penalty notices issued

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Insert in alphabetical order:

Residential Tenancies Act 1987, section 125A