

RESIDENTIAL TENANCIES (AMENDMENT) BILL 1988

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Residential Tenancies Act 1987 with respect to—

- (a) the rights and obligations of landlords and tenants under residential tenancy agreements;
- (b) the appointment of a Tenancy Commissioner, investigators and other officers;
- (c) the suspension and enforcement of orders of possession; and
- (d) other miscellaneous matters.

The Bill also amends the Landlord and Tenant (Amendment) Act 1987 to omit certain uncommenced amendments.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to commence on a day or days to be appointed by proclamation (except clause 4 which is to commence on the date of assent to the proposed Act).

Clause 3 is a formal provision that gives effect to the Schedule of amendments.

Clause 4 amends the Landlord and Tenant (Amendment) Act 1987 by omitting uncommenced amendments to the Landlord and Tenant (Amendment) Act 1948 which transfer functions of the Fair Rents Board and the Rent Controller to the Residential Tenancies Tribunal and functions of a clerk of the Fair Rents Board to the Registrar of the Tribunal.

SCHEDULE 1—AMENDMENTS

Residential tenancy agreements—costs of preparation and alleged breaches

Schedule 1 (2) amends section 12 of the Act so as to make the costs of preparation of a residential tenancy agreement payable by the tenant, but only to the maximum amount (if any) prescribed by the regulations (at present, the costs are to be borne by the landlord and tenant in equal shares).

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Schedule 1 (3) amends section 16 of the Act so as to remove the right of a landlord or a tenant to apply to the Residential Tenancies Tribunal in the event of a dispute arising under the residential tenancy agreement. The section as amended will allow applications to be made only where there is an alleged breach of an agreement.

Rights and obligations of landlords and tenants

Schedule 1 (4) amends section 17 of the Act so that under a residential tenancy agreement a landlord is required to provide one copy only of a residential tenancy agreement to the tenants, rather than a copy to each tenant as at present.

Schedule 1 (5) amends section 24 of the Act which makes it a term of every residential tenancy agreement that the landlord, the landlord's agent or a person authorised in writing by the landlord may enter residential premises in the circumstances set out in the section. The effect of the amendments is to vary the term so that—

- a person authorised by the landlord may enter residential premises to carry out repairs without the necessity for the written consent of the landlord; and
- although 7 days' notice of an inspection (or 2 days' notice of an inspection for the purposes of repairs) is required, that notice is not required to be in writing as at present.

Schedule 1 (5) also inserts a new subsection (4A) into section 24 so as to enable the Residential Tenancies Tribunal to make an order authorising entry to residential premises for the purpose of determining whether the tenant, in breach of the term of the residential tenancy agreement set out in section 23, has used the premises for an illegal purpose, caused a nuisance or interfered with the peace, comfort or privacy of any neighbour.

Schedule 1 (6) amends section 27 of the Act which makes it a term of every residential agreement that the tenant must not affix or remove any fixture except with the landlord's written consent. The effect of the amendment is to vary the term so as to remove the obligation on the landlord not to unreasonably refuse consent. Schedule 1 (3) (c) makes a consequential amendment.

Schedule 1 (7) amends section 28 of the Act so that, as a term of every residential tenancy agreement, a landlord must reimburse a tenant for the cost of urgent repairs only up to \$500, rather than up to \$800 as at present. Schedule 1 (7) further varies the term set out in section 28 so that it is subject to the tenant arranging (or attempting to arrange) for a tradesperson nominated by the landlord to carry out the urgent repairs involved.

Schedule 1 (8) amends section 32 of the Act so as to remove the obligation on the landlord to give the tenant notice of his or her residential address if the landlord has given the tenant notice of the business address of the landlord's agent.

Schedule 1 (9) amends section 33 of the Act which makes it a term of every residential tenancy agreement that the tenant may assign his or her rights under a residential tenancy agreement or sublet the residential premises with the landlord's prior consent. The effect of the amendment is to vary the term so as to remove the obligation on the landlord not to unreasonably refuse consent.

Rents

Schedule 1 (10) amends section 38 of the Act so as to prohibit a person from requiring more than 2 weeks' rent in advance if the proposed rent is \$250 or less, or more than 1 month's rent in advance if the proposed rent is more than \$250 (the present amount is \$300).

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Schedule 1 (11) amends section 48 of the Act so that the Residential Tenancies Tribunal may, when determining an application that a rent, or rent increase, is excessive, consider only work done to the premises by the tenant, and not also work intended to be done as at present.

Schedule 1 (12) amends section 49 of the Act so as to allow the Residential Tenancies Tribunal, in a case where it determines that a rent is excessive because of the removal or withdrawal of goods or services by the landlord, to make an order reducing the rent from the date of the removal or withdrawal. (Currently, an order may only be made effective from the date of the application.)

Termination of residential tenancy agreements

Schedule 1 (13) amends section 57 of the Act by substituting subsection (2) so as to enable the landlord to require premises to be vacated 7 days after notice of termination of the residential tenancy agreement is given (rather than 14 days as at present) where rent has not been paid. In any other case of termination of an agreement, the tenant may not be required to vacate the premises until 14 days after notice of termination has been given.

Schedule 1 (14) amends section 65 of the Act by inserting a new subsection (1A) which allows the Residential Tenancies Tribunal to make payment of an occupation fee a condition of suspension of an order for possession.

Schedule 1 (15) amends section 73 of the Act so as to enable the Registrar or a Deputy Registrar (as well as the Chairperson or any other Tribunal member) to issue a warrant authorising enforcement of an order for possession.

Tenancy Commissioner

Currently, the Act provides for the Commissioner for Consumer Affairs to exercise functions under the Act. These functions are to be transferred to the Tenancy Commissioner as a result of the transfer of the administration of the Act from the Minister for Consumer Affairs to the Minister for Housing.

Schedule 1 (20) inserts new sections 117A and 117B into the Act.

- New section 117A provides for the appointment of a Tenancy Commissioner under the Public Sector Management Act 1988.
- New section 117B provides for the appointment of staff to enable the Tenancy Commissioner to carry out his or her functions under the Act.

Schedule 1 (22) inserts new sections 119A–119E into the Act. The new sections are similar to provisions in the Residential Tenancies Tribunal Act 1986 (which will be repealed by the Act on its commencement) and provisions in the Fair Trading Act 1987. (The provisions of the Fair Trading Act confer powers on the Commissioner for Consumer Affairs and other officers which could have been exercised in relation to possible offences under the Act if its administration had not been transferred.)

- New section 119A provides for officers to be appointed as investigators and provided with certificates of identification by the Minister. An investigator must produce his or her certificate of identification on request to any person who is required to comply with a notice given by the investigator.
- New section 119B confers on an investigator the power to require a person, by notice in writing, to give information, produce documents or give evidence in relation to a possible offence against the Act and to enter premises to examine documents for the purpose of determining whether or not an offence against the Act has been committed.

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- New section 119C empowers the Tenancy Commissioner, a person authorised by the Commissioner or an investigator to inspect, to retain possession and to take copies of documents produced under section 119B.
- New section 119D exempts the Tenancy Commissioner, investigators and other officers from personal liability for actions done in good faith in the course of administering the Act.
- New section 119E requires the Tenancy Commissioner to prepare an annual report on the Commissioner's activities.

Schedule 1 (1) (a)-(d), (17), (19), (21) and (23) make amendments as a consequence of the amendments made by Schedule 1 (20) and (22).

Miscellaneous amendments

Schedule 1 (1) (e) amends section 3 of the Act to make it clear that the Act applies to residential tenancy agreements under which the tenant is a corporation if any natural person resides on the premises.

Schedule 1 (16) amends section 81 of the Act by way of statute law revision.

Schedule 1 (18) amends section 116 of the Act to allow an officer prescribed by the regulations to act as an informant in proceedings for contempt of the Residential Tenancies Tribunal.

Schedule 1 (24) inserts new section 120A into the Act which provides that if a person brings proceedings in any court, rather than in the Residential Tenancies Tribunal, and the court is of the opinion that the Tribunal has adequate powers to deal with the case, the court must order the person to pay the defendant's costs.

Schedule 1 (25) amends section 125 of the Act so as to make it an offence, for which there is a penalty of \$500, for a person to fail to comply with a notice of an investigator or to obstruct an investigator in carrying out functions under section 119B.

Schedule 1 (26) amends section 130 of the Act so as to enable documents (other than notices of termination) to be given to landlords, or documents and applications to be given or lodged with the Residential Tenancies Tribunal, by facsimile transmission.

Schedule 1 (27) repeals section 131 of the Act which provides for certain offences under the Act to be dealt with by the issue of penalty notices. Consequently, Schedule 1 (29) omits section 135 of the Act which amends the definition of "penalty notice" in the Justices Act 1902 to include a reference to section 131.

Schedule 1 (28) amends section 132 of the Act so that the New South Wales Land and Housing Corporation is exempt from the provisions of section 35 (recognition of certain persons as tenants) and section 45 (2) (60 days' notice of increase of rent), in addition to the provisions of sections 40 and 41. Under the amended section, the corporation will not be exempt from the provisions of section 27 (alterations, additions etc. to residential premises) and section 33 (right to assign rights or sub-let), as presently provided by the Act.

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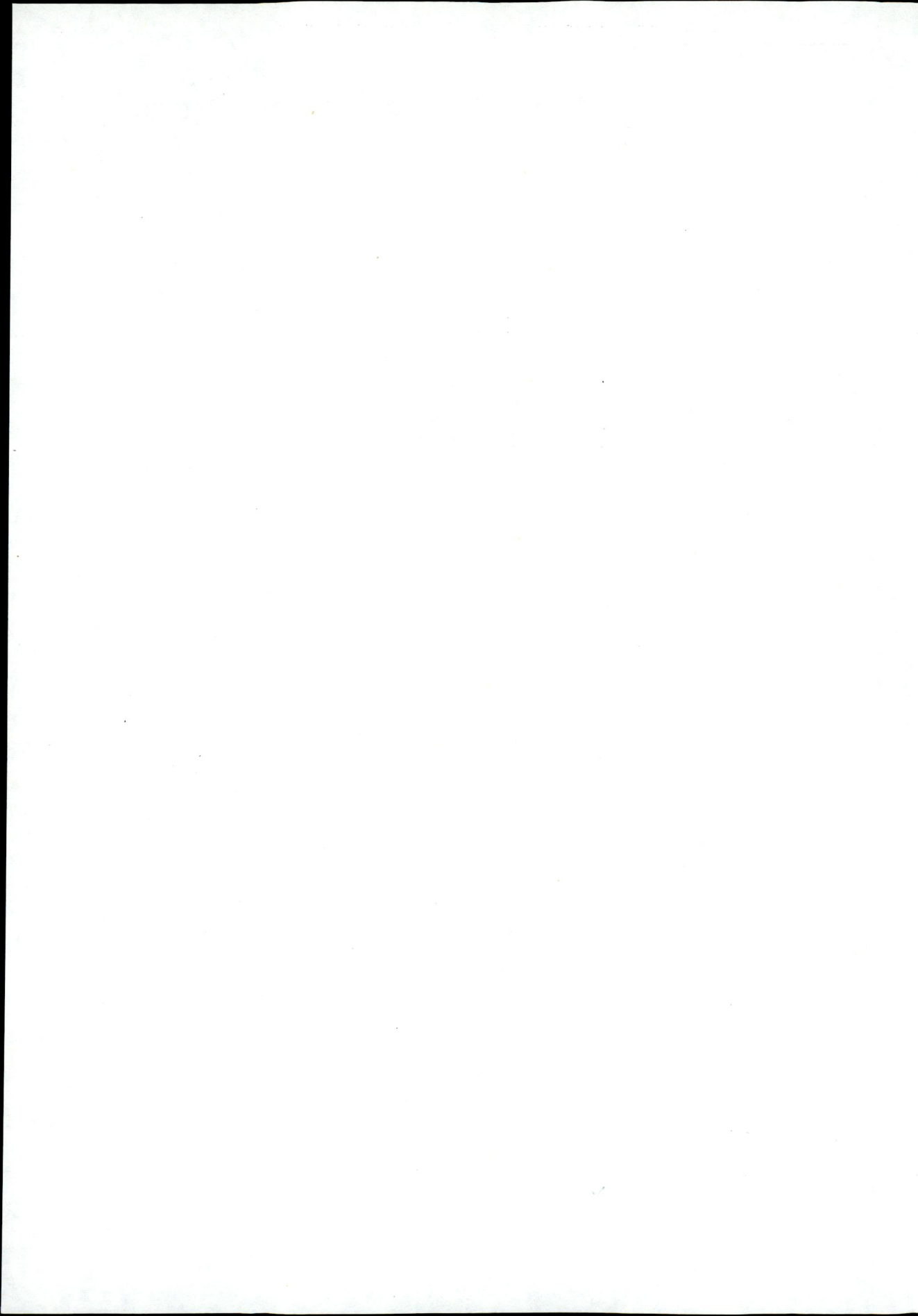
NEW SOUTH WALES



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SCHEDULE 1—AMENDMENT OF THE RESIDENTIAL TENANCIES ACT 1987



RESIDENTIAL TENANCIES (AMENDMENT) BILL 1988

NEW SOUTH WALES



No. , 1988

A BILL FOR

An Act to amend the Residential Tenancies Act 1987 with respect to the rights and obligations of landlords and tenants under residential tenancy agreements and the appointment of a Tenancy Commissioner; to amend the Landlord and Tenant (Amendment) Act 1987; and for other purposes.

Residential Tenancies (Amendment) 1988

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Residential Tenancies (Amendment) Act 1988.

5 Commencement

2. (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).

(2) Section 4 commences on the date of assent to this Act.

Amendment of Residential Tenancies Act 1987 No. 26

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

Amendment of Landlord and Tenant (Amendment) Act 1987 No. 27

4. The Landlord and Tenant (Amendment) Act 1987 is amended by omitting Schedule 2 (2)–(5), (7) and (9).

15 **SCHEDULE 1—AMENDMENT OF THE RESIDENTIAL
TENANCIES ACT 1987**

(Sec. 3)

(1) Section 3 (**Interpretation**)—

20 (a) Section 3 (1), definition of “Commissioner for Consumer Affairs”—

Omit the definition.

(b) Section 3 (1)—

After the definition of “Deputy Registrar”, insert:

25 “investigator” means an officer appointed as an investigator by the Minister under section 119A;

(c) Section 3 (1)—

After the definition of “movable dwelling”, insert:

“officer” means—

- 30 (a) the Tenancy Commissioner; or
(b) a person employed under the Public Sector Management Act 1988 as referred to in section 117B (1); or
(c) a person whose services are used in accordance with section 117B (2);

Residential Tenancies (Amendment) 1988

 SCHEDULE 1—AMENDMENT OF THE RESIDENTIAL TENANCIES
 ACT 1987—*continued*

(d) Section 3 (1)—

After the definition of “tenancy”, insert:

“Tenancy Commissioner” means the Tenancy Commissioner referred to in section 117A;

5 (e) Section 3 (4)—

Omit the subsection, insert instead:

10 (4) For the purpose of determining whether an agreement is a residential tenancy agreement as defined in subsection (1), it does not matter that the person granted the right of occupation is a corporation if the premises are used (or intended for use) as a residence by a natural person.

(2) Section 12 (**Costs of preparation etc. of residential tenancy agreement**)—

(a) Section 12 (1)—

15 Omit “in equal shares by the landlord and the tenant”, insert instead “by the tenant”.

(b) Section 12 (4)—

After section 12 (3), insert:

20 (4) If the regulations prescribe a maximum amount payable by the tenant for any such costs or charges, any difference between those costs or charges and the maximum amount prescribed is payable by the landlord.

(3) Section 16 (**Applications relating to a breach of residential tenancy agreement**)—

25 (a) Section 16 (1)—

Omit the subsection, insert instead:

30 (1) If a landlord or a tenant under a residential tenancy agreement claims that a breach of a term of the agreement has occurred, the landlord or the tenant may, not later than 30 days after becoming aware of the breach, apply to the Tribunal for an order in respect of the breach.

(b) Section 16 (2) (d) (i)—

After “rent;”, insert “and”.

(c) Section 16 (2) (d) (ii)—

35 Omit “unreasonably”.

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 SCHEDULE 1—AMENDMENT OF THE RESIDENTIAL TENANCIES
 ACT 1987—*continued*
(4) Section 17 (**Landlord to give tenant copy of residential tenancy agreement**)—

Section 17 (1)—

Omit “each tenant”, insert instead “the tenant”.

5 (5) Section 24 (**Landlord’s access to residential premises**)—

(a) Section 24 (1)—

Omit “in writing”.

(b) Section 24 (1) (b), (c)—

Omit “written” wherever occurring.

10 (c) Section 24 (2)—

Omit “(c)”.

(d) Section 24 (3A)—

After section 24 (3), insert:

15 (3A) It is a term of every residential tenancy agreement that a person shall not enter the residential premises in the circumstances set out in subsection (1) (c)—

(a) on a Sunday or a public holiday, unless the tenant otherwise agrees; and

20 (b) except between the hours of 8.00 a.m. and 8.00 p.m., unless the tenant otherwise agrees.

(e) Section 24 (4A)—

After section 24 (4), insert:

25 (4A) Without limiting the generality of subsection (4), the Tribunal may make an order under that subsection authorising the landlord or any other person to enter the residential premises for the purpose of determining whether the tenant has breached the term of the residential tenancy agreement set out in section 23.

(6) Section 27 (**Alterations, additions etc. to residential premises**)—

(a) Section 27 (c)—

30 Omit the paragraph.

(b) Section 27 (e)—

Omit “reasonably”.

(c) Section 27 (2)—

At the end of section 27, insert:

Residential Tenancies (Amendment) 1988

 SCHEDULE 1—AMENDMENT OF THE RESIDENTIAL TENANCIES
 ACT 1987—*continued*

- 5 (2) Despite section 133B of the Conveyancing Act 1919 or any other law, it is not an implied term of a residential tenancy agreement that the landlord shall not unreasonably withhold or refuse consent to any proposed action by the tenant referred to in subsection (1) (a) or (b).
- (7) Section 28 (**Urgent repairs**)—
- (a) Section 28 (1)—
 Omit “\$800”, insert instead “\$500”.
- (b) Section 28 (1) (c1)—
 10 After section 28 (1) (c), insert:
- (c1) if the landlord has, in the agreement, nominated a licensed or otherwise properly qualified person or persons to carry out repairs of the kind concerned, the tenant has made a reasonable attempt to arrange for that person or one of
 15 those persons to carry out the repairs;
- (8) Section 32 (**Changes of name or address**)—
 After section 32 (2), insert:
- (2A) A landlord is not required to give the tenant notice of the
 20 landlord’s residential address under this section if the landlord has given the tenant notice in writing of the business address of the landlord’s agent.
- (9) Section 33 (**Right to assign rights or sub-let**)—
- (a) Section 33 (a)—
 After “premises;”, insert “and”.
- 25 (b) Section 33 (b)—
 Omit the paragraph.
- (c) Section 33 (2)—
 At the end of section 33, insert:
- (2) Despite section 133B of the Conveyancing Act 1919 or any
 30 other law, it is not an implied term of a residential tenancy agreement that the landlord shall not unreasonably withhold or refuse consent to an assignment or sub-letting referred to in subsection (1).
- (10) Section 38 (**Rent in advance**)—
- 35 (a) Section 38 (1) (b)—
 Omit “4 weeks’ ”, insert instead “1 month’s”.

Residential Tenancies (Amendment) 1988

 SCHEDULE 1—AMENDMENT OF THE RESIDENTIAL TENANCIES
 ACT 1987—*continued*

(b) Section 38 (3)—

Omit “\$300”, insert instead “\$250”.

(11) Section 48 (**Matters to be considered in determining rent applications**)—

5 Section 48 (f)—

Omit “or intended to be done”.

(12) Section 49 (**Orders as to excessive rent increases or rents**)—

(a) Section 49 (3)—

10 After “excessive”, insert “having regard to the reduction or withdrawal by the landlord of any goods, services or facilities provided with the premises”.

(b) Section 49 (3)—

Omit “the date of the tenant’s application to the Tribunal”, insert instead “the date of that reduction or withdrawal”.

15 (13) Section 57 (**Notice of termination on ground of breach of agreement**)—

Omit section 57 (2), insert instead:

(2) A notice of termination given under this section shall not specify—

20 (a) in the case of notice given on the ground of a breach of the agreement to pay rent—a day earlier than 7 days; and

(b) in any other case—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 or will be delivered up to the landlord.

25 (14) Section 65 (**Suspension or refusal of orders for termination**)—

After section 65 (1), insert:

(1A) The Tribunal may, as a condition of the suspension of the operation of an order for possession, require the tenant to pay to the landlord an occupation fee specified by the Tribunal for the period for which the order for possession is suspended.

30 (15) Section 73 (**Enforcement of orders for possession**)—

Omit section 73 (1), insert instead:

(1) If an order for possession of residential premises is made by the Tribunal, then the Chairperson, any other member, the Registrar or a Deputy Registrar may—

35

(a) on the application of the person in whose favour the order was made; and

Residential Tenancies (Amendment) 1988

SCHEDULE 1—AMENDMENT OF THE RESIDENTIAL TENANCIES
ACT 1987—*continued*

- (b) if satisfied that the order for possession or a condition of suspension of the order has not been complied with,
issue a warrant, in or to the effect of the prescribed form, authorising a sheriff's officer to enter the residential premises and to give possession to the person in whose favour the order was made.
- 5
- (16) Section 81 (**Registrar, Deputy Registrars and staff of the Tribunal**)—
- (a) Section 81 (1)—
Omit "Public Service Act 1979", insert instead "Public Sector Management Act 1988".
- 10
- (b) Section 81 (3)—
Omit the subsection, insert instead:
- (3) The Tribunal may, with the approval of the Minister, arrange for the use of the services of any staff or facilities of a government department, an administrative office or a public or local authority.
- 15
- (17) Sections 93 (5), 94 (2) (b) and (5), 95, 96 (1), 97, 98 (1), 104 (c) and 117—
Omit "Commissioner for Consumer Affairs" wherever occurring, insert instead "Tenancy Commissioner".
- 20
- (18) Section 116 (**Misconduct in proceedings before Tribunal**)—
Section 116 (3)—
After "The Registrar", insert "or an officer prescribed by the regulations for the purposes of this section".
- 25
- (19) Part 7, heading—
Omit "MISCELLANEOUS", insert instead "ADMINISTRATION".
- (20) Sections 117A, 117B—
Before section 118, insert:
- 30
- Tenancy Commissioner**
- 117A. (1) A Tenancy Commissioner shall be employed under the Public Sector Management Act 1988.
- (2) The Tenancy Commissioner has the functions conferred or imposed on the Tenancy Commissioner by or under this or any other Act.
- 35

*Residential Tenancies (Amendment) 1988*SCHEDULE 1—AMENDMENT OF THE RESIDENTIAL TENANCIES
ACT 1987—*continued*

(3) If the Tenancy Commissioner is absent from duty, the Minister may appoint an officer to act as Tenancy Commissioner during that absence and an officer so acting has the functions of the Tenancy Commissioner.

5 (4) It shall be presumed, unless the contrary is proved, that an officer purporting to act under subsection (3) has been duly appointed under that subsection.

10 (5) The Tenancy Commissioner (including an acting Tenancy Commissioner) is, in the exercise of his or her functions as Tenancy Commissioner, subject to the control and direction of the Minister.

Staff

15 117B. (1) Such staff as may be necessary to enable the Tenancy Commissioner to exercise his or her functions shall be employed under the Public Sector Management Act 1988.

(2) The Tenancy Commissioner may, with the approval of the Minister, arrange for the use of the services of any staff or facilities of a government department, administrative office or a public or local authority.

20 (21) Sections 118, 119 (1)—

Omit “Commissioner for Consumer Affairs” wherever occurring, insert instead “Tenancy Commissioner”.

(22) Sections 119A–119E—

After section 119, insert:

25 **Office and identification of investigator**

119A. (1) The Minister may appoint an officer as an investigator for the purposes of this Act.

(2) The Minister may provide an investigator with a certificate of identification as an investigator.

30 (3) An investigator may not exercise in any premises a function conferred by section 119B unless the investigator produces his or her certificate of identification if requested to do so by a person apparently in charge of those premises or apparently in charge of any work being performed on those premises.

35 (4) A person is not required to give to an investigator information or evidence, or to produce a document, in compliance with a notice under section 119B unless the investigator produces, if requested to do so, his or her certificate of identification.

SCHEDULE 1—AMENDMENT OF THE RESIDENTIAL TENANCIES
ACT 1987—*continued*

Power of investigator to obtain information, documents and evidence

- 5 119B. (1) If the Tenancy Commissioner believes on reasonable grounds that a person is capable of giving information, producing documents or giving evidence in relation to a matter that constitutes, or may constitute, an offence against this Act, an investigator may, by notice in writing given to the person, require the person—
- 10 (a) to provide an investigator, by writing signed by the person (or, in the case of a body corporate, by a competent officer of the body corporate) and given to the investigator within the time and in the manner specified in the notice, with any such information; or
- (b) to produce to an investigator, in accordance with the notice, any such documents; or
- 15 (c) to appear before an investigator at a time and place specified in the notice and give any such evidence, either orally or in writing, and produce any such documents.
- (2) If the Tenancy Commissioner believes on reasonable grounds that a person has engaged, or is engaging, in conduct that constitutes, or may constitute, an offence against this Act, an investigator may, for the purpose of ascertaining by the examination of documents in the possession or under the control of the person whether the person has engaged, or is engaging, in that conduct—
- 20 (a) enter any premises; and
- (b) inspect any documents in the possession or under the control of the person; and
- (c) make copies of, or take extracts from, those documents.
- (3) A person shall not—
- 30 (a) refuse or fail to comply with a notice under this section to the extent that the person is capable of complying with it; or
- (b) in purported compliance with such a notice, provide information, or give evidence, that the person knows is false or misleading; or
- 35 (c) hinder or obstruct an investigator exercising his or her functions under subsection (2).

*Residential Tenancies (Amendment) 1988***SCHEDULE 1—AMENDMENT OF THE RESIDENTIAL TENANCIES
ACT 1987—continued**

5 (4) A person is excused from providing information, giving evidence or producing or permitting the inspection of a document in accordance with this section on the ground that the information, evidence or document may tend to incriminate the person.

(5) This section does not authorise any person to enter a part of any premises that is being used for residential purposes without the consent of the occupier of that part of the premises.

Inspection of documents by Tenancy Commissioner and others

10 119C. (1) The Tenancy Commissioner, a person authorised by the Commissioner or an investigator may inspect a document produced in accordance with a notice under section 119B and may make copies of, or take extracts from, the document.

15 (2) For the purposes of this Act, the Tenancy Commissioner or an investigator may—

(a) take possession; and

(b) retain possession for as long as is necessary for those purposes,

20 of a document produced in accordance with a notice under section 119B.

25 (3) A person who is otherwise entitled to possession of a document retained under this section is entitled to be supplied, as soon as practicable, with a copy certified by an officer to be a true copy and the certified copy is admissible as evidence in all courts as if it were the original document.

Exclusion of personal liability

30 119D. No personal liability is incurred by the Tenancy Commissioner, an investigator or any other officer, for any act done or omitted in good faith for the purpose of executing this Act.

Annual report

35 119E. (1) As soon as practicable after 30 June, but on or before 31 December, in each year, the Tenancy Commissioner shall prepare and forward to the Minister a report of the operations of the Tenancy Commissioner during that year.

(2) The Minister shall lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving the report.

Residential Tenancies (Amendment) 1988

 SCHEDULE 1—AMENDMENT OF THE RESIDENTIAL TENANCIES
 ACT 1987—*continued*

(23) Part 8, heading—

Before section 120, insert:

PART 8—MISCELLANEOUS

(24) Section 120A—

5 After section 120, insert:

Costs in court proceedings

10 120A. If a court in any proceedings is of the opinion that, having regard to the subject-matter of the proceedings, the taking of the proceedings was not warranted in the circumstances of the case because this Act makes adequate provision for the enforcement by the Tribunal of the rights concerned, the court shall order the plaintiff to pay the defendant's costs in such amount as the court determines.

(25) Section 125 (**Offences and penalties**)—

15 Section 125 (1)—

After “section 116 (2)—5 penalty units;”, insert:

section 119B (3)—5 penalty units;

(26) Section 130 (Service of documents)—

(a) Section 130 (2) (b)—

20 Omit “or” where lastly occurring.

(b) Section 130 (2) (b1)—

After section 130 (2) (b), insert:

(b1) by sending it by facsimile transmission to the landlord's usual place of residence or business or employment; or

25 (c) Section 130 (3)—

After “by leaving it at,” insert “by sending it by facsimile transmission”.

(27) Section 131 (**Penalty notices for certain offences**)—

Omit the section.

30 (28) Section 132 (**New South Wales Land and Housing Corporation**)—

(a) Section 132—

Omit “27, 33, 40 and 41”, insert instead “40, 41 and 45 (2)”.

(b) Section 132 (2)—

At the end of section 132, insert:

Residential Tenancies (Amendment) 1988

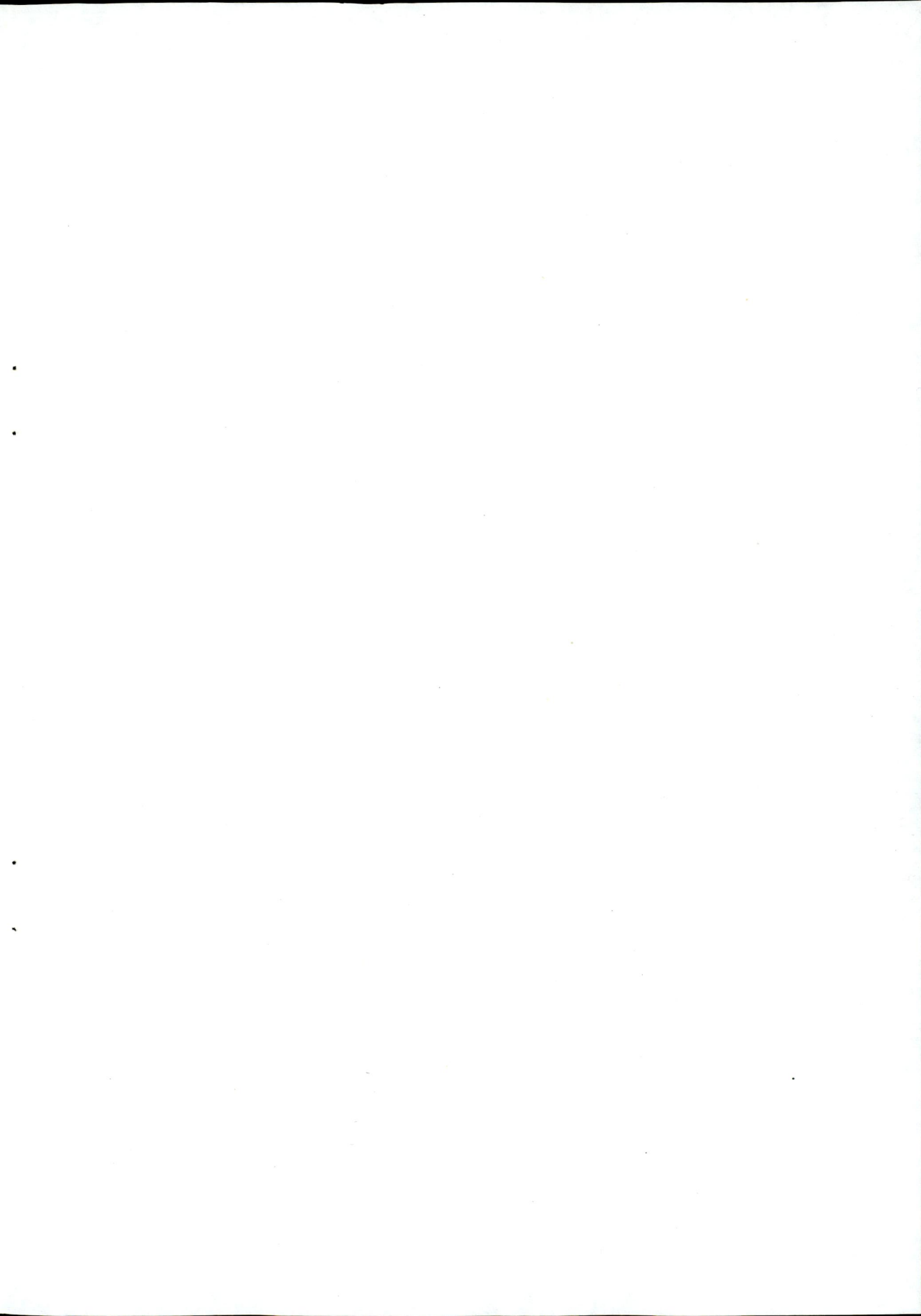
SCHEDULE 1—AMENDMENT OF THE RESIDENTIAL TENANCIES
ACT 1987—*continued*

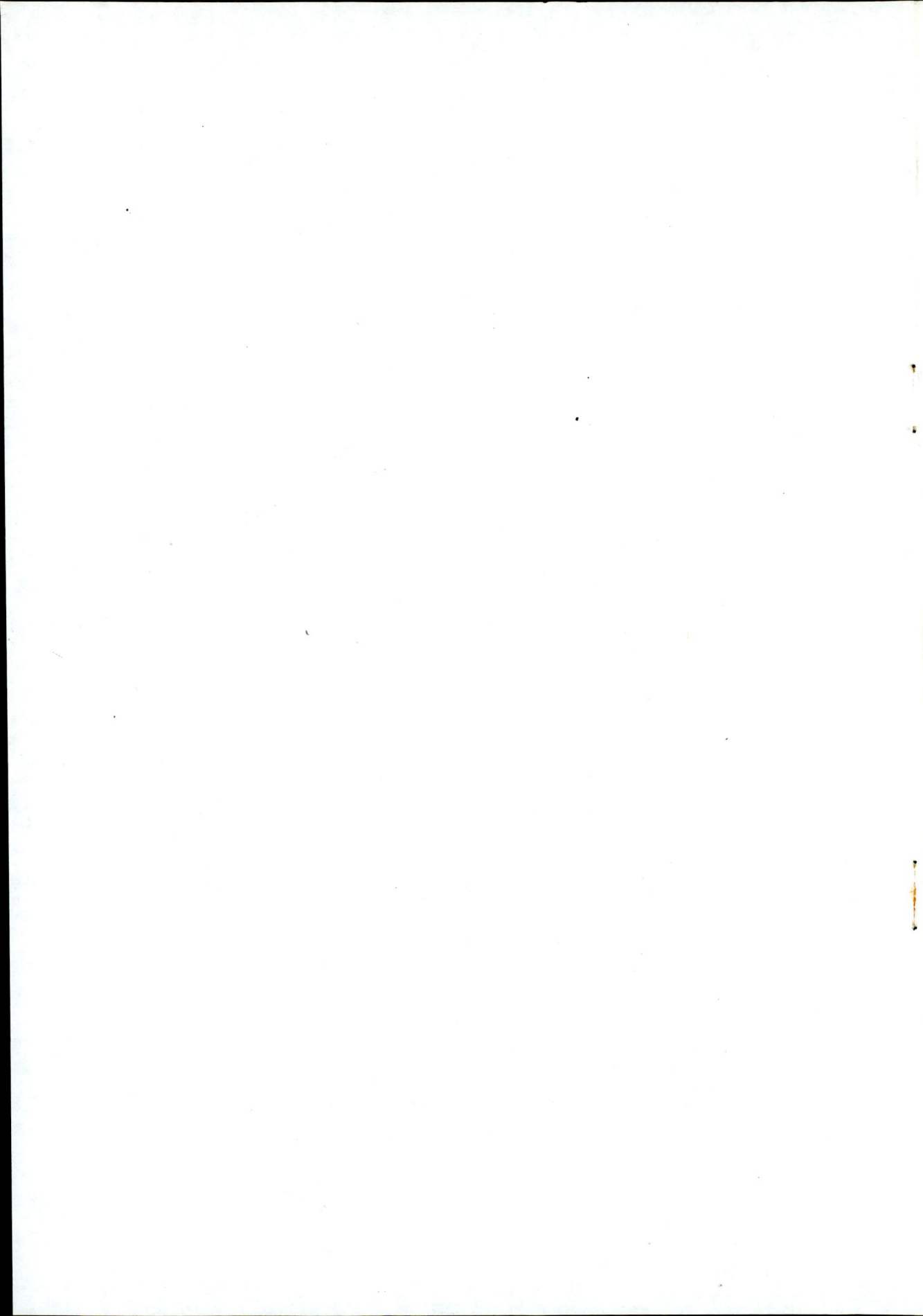
(2) Section 35 does not apply to premises of which the New South Wales Land and Housing Corporation is the landlord.

(29) Section 135 (**Amendment of Act No. 27, 1902, s. 1001 (Interpretation)**)—

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Omit the section.





RESIDENTIAL TENANCIES (AMENDMENT) ACT 1989
No. 73

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RESIDENTIAL TENANCIES (AMENDMENT) ACT 1989 No. 73

NEW SOUTH WALES



Act No. 73, 1989

An Act to amend the Residential Tenancies Act 1987 with respect to the rights and obligations of landlords and tenants under residential tenancy agreements and the appointment of a Tenancy Commissioner; to amend the Landlord and Tenant (Amendment) Act 1987; and for other purposes.
[Assented to 2 June 1989]

Residential Tenancies (Amendment) 1989

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Residential Tenancies (Amendment) Act 1989.

Commencement

2. (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).

(2) Section 4 commences on the date of assent to this Act.

Amendment of Residential Tenancies Act 1987 No. 26

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

Amendment of Landlord and Tenant (Amendment) Act 1987 No. 27

4. The Landlord and Tenant (Amendment) Act 1987 is amended by omitting Schedule 2 (2)–(5), (7) and (9).

**SCHEDULE 1—AMENDMENT OF THE RESIDENTIAL
TENANCIES ACT 1987**

(Sec. 3)

(1) Section 3 (**Interpretation**)—

(a) Section 3 (1), definition of “Commissioner for Consumer Affairs”—

Omit the definition.

(b) Section 3 (1)—

After the definition of “Deputy Registrar”, insert:

“investigator” means an officer appointed as an investigator by the Minister under section 119A;

(c) Section 3 (1)—

After the definition of “movable dwelling”, insert:

“officer” means—

(a) the Tenancy Commissioner; or

(b) a person employed under the Public Sector Management Act 1988 as referred to in section 117B (1); or

(c) a person whose services are used in accordance with section 117B (2);

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(d) Section 3 (1)—

After the definition of “tenancy”, insert:

“Tenancy Commissioner” means the Tenancy Commissioner referred to in section 117A;

(e) Section 3 (4)—

Omit the subsection, insert instead:

(4) For the purpose of determining whether an agreement is a residential tenancy agreement as defined in subsection (1), it does not matter that the person granted the right of occupation is a corporation if the premises are used (or intended for use) as a residence by a natural person.

(2) Section 12 (**Costs of preparation etc. of residential tenancy agreement**)—

Section 12 (4)—

After section 12 (3), insert:

(4) If the regulations prescribe a maximum amount payable by the tenant for any such costs or charges, any difference between those costs or charges and the maximum amount prescribed is payable by the landlord.

(3) Section 16 (**Applications relating to a breach of residential tenancy agreement**)—

(a) Section 16 (1)–(1C)—

Omit section 16 (1), insert instead:

(1) If a landlord or a tenant under a residential tenancy agreement claims that a breach of a term of the agreement has occurred, the landlord or the tenant may, not later than 30 days after becoming aware of the breach, apply to the Tribunal for an order in respect of the breach.

(1A) If a landlord or a tenant under a residential tenancy agreement claims that a dispute has arisen under the agreement, the landlord or the tenant may refer the dispute to the Tenancy Commissioner.

(1B) When a dispute is referred to the Tenancy Commissioner under this section, the Tenancy Commissioner may attempt to bring the landlord and the tenant to a settlement acceptable to them.

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- (1c) If the landlord and tenant fail to make such a settlement, the landlord or the tenant may, with the consent of the Tenancy Commissioner, apply to the Tribunal for an order in respect of the dispute.
- (b) Section 16 (2) (d) (i)—
After “rent;”, insert “and”.
- (c) Section 16 (2) (d) (ii)—
Omit “unreasonably”.
- (4) **Section 17 (Landlord to give tenant copy of residential tenancy agreement)—**
Section 17 (1)—
Omit “each tenant”, insert instead “the tenant”.
- (5) **Section 24 (Landlord’s access to residential premises)—**
(a) Section 24 (1)—
Omit “in writing”.
(b) Section 24 (1) (b), (c)—
Omit “written” wherever occurring.
(c) Section 24 (4A)—
After section 24 (4), insert:
(4A) Without limiting the generality of subsection (4), the Tribunal may make an order under that subsection authorising the landlord or any other person to enter the residential premises for the purpose of determining whether the tenant has breached the term of the residential tenancy agreement set out in section 23.
- (6) **Section 27 (Alterations, additions etc. to residential premises)—**
(a) Section 27 (c)—
Omit the paragraph.
(b) Section 27 (e)—
Omit “reasonably”.
(c) Section 27 (2)—
At the end of section 27, insert:
(2) Despite section 133B of the Conveyancing Act 1919 or any other law, it is not an implied term of a residential tenancy agreement that the landlord shall not unreasonably withhold or refuse consent to any proposed action by the tenant referred to in subsection (1) (a) or (b).

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- (7) Section 28 (**Urgent repairs**)—
- (a) Section 28 (1)—
Omit “\$800”, insert instead “\$500”.
- (b) Section 28 (1) (c1)—
After section 28 (1) (c), insert:
- (c1) if the landlord has, in the agreement, nominated a licensed or otherwise properly qualified person or persons to carry out repairs of the kind concerned, the tenant has made a reasonable attempt to arrange for that person or one of those persons to carry out the repairs;
- (8) Section 32 (**Changes of name or address**)—
After section 32 (2), insert:
- (2A) A landlord is not required to give the tenant notice of the landlord’s residential address under this section if the landlord has given the tenant notice in writing of the business address of the landlord’s agent.
- (9) Section 33 (**Right to assign rights or sub-let**)—
- (a) Section 33 (a)—
After “premises;”, insert “and”.
- (b) Section 33 (b)—
Omit the paragraph.
- (c) Section 33 (2)—
At the end of section 33, insert:
- (2) Despite section 133B of the Conveyancing Act 1919 or any other law, it is not an implied term of a residential tenancy agreement that the landlord shall not unreasonably withhold or refuse consent to an assignment or sub-letting referred to in subsection (1).
- (10) Section 38 (**Rent in advance**)—
Section 38 (1) (b)—
Omit “4 weeks’ ”, insert instead “1 month’s”.
- (11) Section 48 (**Matters to be considered in determining rent applications**)—
Section 48 (f)—
Omit “or intended to be done”.

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(12) Section 49 (**Orders as to excessive rent increases or rents**)—

(a) Section 49 (3)—

After “excessive”, insert “having regard to the reduction or withdrawal by the landlord of any goods, services or facilities provided with the premises”.

(b) Section 49 (3)—

Omit “the date of the tenant’s application to the Tribunal”, insert instead “the date of that reduction or withdrawal”.

(13) Section 65 (**Suspension or refusal of orders for termination**)—

After section 65 (1), insert:

(1A) The Tribunal may, as a condition of the suspension of the operation of an order for possession, require the tenant to pay to the landlord an occupation fee specified by the Tribunal for the period for which the order for possession is suspended.

(14) Section 73 (**Enforcement of orders for possession**)—

Omit section 73 (1), insert instead:

(1) If an order for possession of residential premises is made by the Tribunal, then the Chairperson, any other member, the Registrar or a Deputy Registrar may—

(a) on the application of the person in whose favour the order was made; and

(b) if satisfied that the order for possession or a condition of suspension of the order has not been complied with,

issue a warrant, in or to the effect of the prescribed form, authorising a sheriff’s officer to enter the residential premises and to give possession to the person in whose favour the order was made.

(15) Section 81 (**Registrar, Deputy Registrars and staff of the Tribunal**)—

(a) Section 81 (1)—

Omit “Public Service Act 1979”, insert instead “Public Sector Management Act 1988”.

(b) Section 81 (3)—

Omit the subsection, insert instead:

(3) The Tribunal may, with the approval of the Minister, arrange for the use of the services of any staff or facilities of a government department, an administrative office or a public or local authority.

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- (16) Sections 93 (5), 94 (2) (b) and (5), 95, 96 (1), 97, 98 (1), 104 (c) and 117—

Omit “Commissioner for Consumer Affairs” wherever occurring, insert instead “Tenancy Commissioner”.

- (17) Section 116 (**Misconduct in proceedings before Tribunal**)—
Section 116 (3)—

After “The Registrar”, insert “or an officer prescribed by the regulations for the purposes of this section”.

- (18) Part 7, heading—

Omit “MISCELLANEOUS”, insert instead “ADMINISTRATION”.

- (19) Sections 117A, 117B—

Before section 118, insert:

Tenancy Commissioner

117A. (1) A Tenancy Commissioner shall be employed under the Public Sector Management Act 1988.

(2) The Tenancy Commissioner has the functions conferred or imposed on the Tenancy Commissioner by or under this or any other Act.

(3) If the Tenancy Commissioner is absent from duty, the Minister may appoint an officer to act as Tenancy Commissioner during that absence and an officer so acting has the functions of the Tenancy Commissioner.

(4) It shall be presumed, unless the contrary is proved, that an officer purporting to act under subsection (3) has been duly appointed under that subsection.

(5) The Tenancy Commissioner (including an acting Tenancy Commissioner) is, in the exercise of his or her functions as Tenancy Commissioner, subject to the control and direction of the Minister.

Staff

117B. (1) Such staff as may be necessary to enable the Tenancy Commissioner to exercise his or her functions shall be employed under the Public Sector Management Act 1988.

(2) The Tenancy Commissioner may, with the approval of the Minister, arrange for the use of the services of any staff or facilities of a government department, administrative office or a public or local authority.

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(20) Sections 118, 119 (1)—

Omit “Commissioner for Consumer Affairs” wherever occurring, insert instead “Tenancy Commissioner”.

(21) Sections 119A–119E—

After section 119, insert:

Office and identification of investigator

119A. (1) The Minister may appoint an officer as an investigator for the purposes of this Act.

(2) The Minister may provide an investigator with a certificate of identification as an investigator.

(3) An investigator may not exercise in any premises a function conferred by section 119B unless the investigator produces his or her certificate of identification if requested to do so by a person apparently in charge of those premises or apparently in charge of any work being performed on those premises.

(4) A person is not required to give to an investigator information or evidence, or to produce a document, in compliance with a notice under section 119B unless the investigator produces, if requested to do so, his or her certificate of identification.

Power of investigator to obtain information, documents and evidence

119B. (1) If the Tenancy Commissioner believes on reasonable grounds that a person is capable of giving information, producing documents or giving evidence in relation to a matter that constitutes, or may constitute, an offence against this Act, an investigator may, by notice in writing given to the person, require the person—

- (a) to provide an investigator, by writing signed by the person (or, in the case of a body corporate, by a competent officer of the body corporate) and given to the investigator within the time and in the manner specified in the notice, with any such information; or
- (b) to produce to an investigator, in accordance with the notice, any such documents; or
- (c) to appear before an investigator at a time and place specified in the notice and give any such evidence, either orally or in writing, and produce any such documents.

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(2) If the Tenancy Commissioner believes on reasonable grounds that a person has engaged, or is engaging, in conduct that constitutes, or may constitute, an offence against this Act, an investigator may, for the purpose of ascertaining by the examination of documents in the possession or under the control of the person whether the person has engaged, or is engaging, in that conduct—

- (a) enter any premises; and
- (b) inspect any documents in the possession or under the control of the person; and
- (c) make copies of, or take extracts from, those documents.

(3) A person shall not—

- (a) refuse or fail to comply with a notice under this section to the extent that the person is capable of complying with it; or
- (b) in purported compliance with such a notice, provide information, or give evidence, that the person knows is false or misleading; or
- (c) hinder or obstruct an investigator exercising his or her functions under subsection (2).

(4) A person is excused from providing information, giving evidence or producing or permitting the inspection of a document in accordance with this section on the ground that the information, evidence or document may tend to incriminate the person.

(5) This section does not authorise any person to enter a part of any premises that is being used for residential purposes without the consent of the occupier of that part of the premises.

Inspection of documents by Tenancy Commissioner and others

119c. (1) The Tenancy Commissioner, a person authorised by the Commissioner or an investigator may inspect a document produced in accordance with a notice under section 119B and may make copies of, or take extracts from, the document.

(2) For the purposes of this Act, the Tenancy Commissioner or an investigator may—

- (a) take possession; and
- (b) retain possession for as long as is necessary for those purposes,

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of a document produced in accordance with a notice under section 119B.

(3) A person who is otherwise entitled to possession of a document retained under this section is entitled to be supplied, as soon as practicable, with a copy certified by an officer to be a true copy and the certified copy is admissible as evidence in all courts as if it were the original document.

Exclusion of personal liability

119D. No personal liability is incurred by the Tenancy Commissioner, an investigator or any other officer, for any act done or omitted in good faith for the purpose of executing this Act.

Annual report

119E. (1) As soon as practicable after 30 June, but on or before 31 December, in each year, the Tenancy Commissioner shall prepare and forward to the Minister a report of the operations of the Tenancy Commissioner during that year.

(2) The Minister shall lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving the report.

(22) Part 8, heading—

Before section 120, insert:

PART 8—MISCELLANEOUS

(23) Section 120A—

After section 120, insert:

Costs in court proceedings

120A. If a court in any proceedings is of the opinion that, having regard to the subject-matter of the proceedings, the taking of the proceedings was not warranted in the circumstances of the case because this Act makes adequate provision for the enforcement by the Tribunal of the rights concerned, the court shall order the plaintiff to pay the defendant's costs in such amount as the court determines.

(24) Section 125 (**Offences and penalties**)—

Section 125 (1)—

After “section 116 (2)—5 penalty units;”, insert:

section 119B (3)—5 penalty units;

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- (25) Section 130 (Service of documents)—
- (a) Section 130 (2) (b)—
Omit “or” where lastly occurring.
- (b) Section 130 (2) (b1)—
After section 130 (2) (b), insert:
 (b1) by sending it by facsimile transmission to the landlord’s
 usual place of residence or business or employment; or
- (c) Section 130 (3)—
After “by leaving it at,” insert “by sending it by facsimile
transmission”.
- (26) Section 131 (**Penalty notices for certain offences**)—
Omit the section.
- (27) Section 132 (**New South Wales Land and Housing Corporation**)—
- (a) Section 132—
Omit “27, 33, 40 and 41”, insert instead “40, 41 and 45 (2)”.
- (b) Section 132 (2)—
At the end of section 132, insert:
 (2) Section 35 does not apply to premises of which the New
 South Wales Land and Housing Corporation is the landlord.
- (28) Section 135 (**Amendment of Act No. 27, 1902, s. 100i
(Interpretation)**)—
Omit the section.
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*[Minister’s second reading speech made in—
Legislative Assembly on 10 November 1988
Legislative Council on 16 November 1988]*

