

FIRST PRINT

RESIDENTIAL TENANCIES (AMENDMENT) BILL 1994

NEW SOUTH WALES



EXPLANATORY NOTE

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

The object of this Bill is to make miscellaneous amendments to the Residential Tenancies Act 1987, generally in order to provide greater equity for tenants of residential premises.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act commences 3 months after the date of assent, unless sooner commenced by proclamation.

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the Residential Tenancies Act 1987.

SCHEDULE 1—AMENDMENTS

Holiday accommodation

The Principal Act, by section 6 (2) (c), does not apply to “premises ordinarily used for holiday purposes”. **Schedule 1 (1)** amends section 6 to provide that those premises are excluded from the Principal Act only while they are used for holiday purposes.

Responsibility for cleanliness

Schedule 1 (2) amends section 25 of the Principal Act to control the circumstances in which a landlord may use dangerous substances in order to clean or maintain residential premises while they are occupied.

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Locks and new security devices

Schedule 1 (3) amends section 29 of the Principal Act to specify that the standard of locks or other security devices that the landlord is required to provide under that section in order to ensure that the residential premises are reasonably secure is the appropriate insurance standard having regard to the type of residential premises concerned and their location.

Receipts for rent

Schedule 1 (4) amends section 40 of the Principal Act to require rent receipts to be posted to the tenant, without cost and without delay, if the tenant requests it.

Excessive rent

Schedule 1 (5) and (6) make amendments to the Principal Act to provide for the resolution of disputes concerning increases in rent where the tenant is of the opinion that the increase is excessive.

Schedule 1 (5) amends section 46 of the Principal Act to extend the period within which a tenant may apply to the Residential Tenancies Tribunal for an order declaring a rent increase to be excessive from 30 days to 90 days.

Schedule 1 (6) inserts proposed section 47A into the Principal Act to place the onus on the landlord of proving before the Residential Tenancies Tribunal that an increase in rent is not excessive.

Termination of residential tenancy agreements

Schedule 1 (7)–(11) substantially amend the provisions of the Principal Act that specify the circumstances in which a residential tenancy agreement may be terminated on the initiative of the landlord or the tenant. The amendments omit sections 56 and 57 of the Principal Act and replace them with proposed sections 56–57E.

Proposed section 56 provides that a notice of termination may be given only in accordance with Division 2 (Notices of termination) of Part 5 of the Principal Act.

Proposed section 57 provides that notices of termination of the type specified in the proposed section cannot be given so as to terminate a residential tenancy agreement during the currency of its term.

Proposed section 57A specifies the circumstances in which the landlord may give a notice of termination on the ground that the residential premises are to be sold.

Proposed section 57B specifies the circumstances in which the landlord may give a notice of termination on the ground that

- the premises are to be converted to strata title
- the premises are to undergo major renovations requiring vacant possession
- the premises are to be changed to a non-residential use
- the premises are to be demolished.

Proposed section 57C specifies the circumstances in which the landlord may give a notice of termination on the ground that the landlord intends to occupy the premises as the landlord's principal place of residence.

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Proposed section 57D specifies the circumstances in which the landlord may give a notice of termination on the ground that the tenant has breached the residential tenancy agreement (otherwise than in relation to the payment of rent).

Proposed section 57E specifies the circumstances in which the landlord may give a notice of termination on the ground that the tenant has failed to pay rent in accordance with the residential tenancy agreement.

Schedule 1 (8) amends section 58 of the Principal Act to limit the circumstances in which a landlord may give notice of termination of a residential tenancy agreement without any ground to a 180 day notice in respect of premises consisting of the site of certain relocatable homes and registrable moveable dwellings.

Schedule 1 (9) amends section 59 of the Principal Act to reduce, from 21 days to 14 days, the period of notice after which the tenant may terminate a residential tenancy agreement without having to specify any ground.

Schedule 1 (10) substitutes section 61 of the Principal Act to provide that if a residential tenancy agreement is frustrated, otherwise than because of a breach of the agreement, the landlord cannot terminate the agreement by giving the tenant a notice but may only terminate the agreement in accordance with an order of the Residential Tenancies Tribunal.

Schedule 1 (11) amends section 69 of the Principal Act to provide that the Residential Tenancies Tribunal may not make an order terminating a residential tenancy agreement on the ground of hardship that may be suffered by the landlord if the hardship is caused by the landlord's fault.

Recovery of possession of residential premises

Schedule 1 (12) amends section 72 of the Principal Act to provide that an order of a court or the Tribunal for the recovery of possession of residential premises cannot take effect until at least 7 days have elapsed from the date on which the residential tenancy agreement was terminated, unless the agreement was terminated because of serious damage or injury caused by the tenant.

Representation of parties before the Residential Tenancies Tribunal

Schedule 1 (13) amends section 94 of the Principal Act to extend the circumstances in which tenants are entitled to be represented by another person, including a legal practitioner, in proceedings before the Residential Tenancies Tribunal.

Savings and transitional provisions

Schedule 1 (14) and (15) enact savings and transitional provisions consequent on the enactment of the proposed Act.

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RESIDENTIAL TENANCIES (AMENDMENT) BILL 1994

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
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SCHEDULE 1—AMENDMENTS

RESIDENTIAL TENANCIES (AMENDMENT) BILL 1994

NEW SOUTH WALES



No. , 1994

A BILL FOR

An Act to amend the Residential Tenancies Act 1987 to make further provision with respect to the rights and obligations of landlords and tenants under residential tenancy agreements; and for other purposes.

Residential Tenancies (Amendment) 1994

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Residential Tenancies (Amendment) Act 1994.

5 **Commencement**

2. This Act commences 3 months after the date of assent, unless sooner commenced by proclamation.

Amendment of Residential Tenancies Act 1987 No. 26

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

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 6 (**Agreements and premises to which Act does not apply**):

15 After “purposes” in section 6 (2) (c), insert “, but only while they are used for those purposes”.

(2) Section 25 (**Landlord’s responsibility for cleanliness and repairs**):

After section 25 (1), insert:

20 (1A) It is a term of every residential tenancy agreement that:

25 (a) the landlord must not use any chemicals, pesticides, herbicides or cleaning agents on the residential premises without first giving reasonable notice to the tenant; and

(b) the tenant may refuse the use of any such substance unless the landlord is able to establish that it is not dangerous to the health of any occupier of the residential premises.

Residential Tenancies (Amendment) 1994

SCHEDULE 1—AMENDMENTS—*continued*

(3) Section 29 (**Locks and other security devices**):

After section 29 (1), insert:

(1A) Premises are reasonably secure for the purposes of subsection (1) (a) if the locks or other security devices are at least of an appropriate insurance standard having regard to the type of residential premises concerned and their location.

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(4) Section 40 (**Rent receipts**):

(a) After “tenant” where secondly occurring in section 40 (2), insert “, without cost to the tenant and without delay, if the tenant has requested that all receipts be posted”.

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(b) After section 40 (2), insert:

(2A) If the landlord or the landlord’s agent does not comply with subsection (2), the tenant may pay rent under the residential tenancy agreement to the Tribunal until the subsection is complied with.

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(5) Section 46 (**Tenant may apply for an order that a rent increase is excessive**):

Omit “30 days”, insert instead “90 days”.

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(6) Section 47A:

After section 47, insert:

Landlord’s onus of proof that rent or rent increase is not excessive

47A. Despite the fact that an application made under section 46 or 47 is made by the tenant, at the proceedings before the Tribunal, the landlord has the onus of proving that the rent payable or rent increase is not excessive.

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(7) Sections 56–57E:

Omit sections 56 and 57, insert instead:

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Giving of notices of termination

56. A landlord or tenant must not give a notice of termination of a residential tenancy agreement otherwise than in accordance with this Division.

Residential Tenancies (Amendment) 1994

SCHEDULE 1—AMENDMENTS—*continued***Termination notice may not take effect during currency of term**

5 57. A notice of termination may not be given under section 57A, 57B, 57C or 59 so as to terminate a residential tenancy agreement that creates a tenancy for a fixed term during the currency of the term.

Notice of termination by landlord—sale of premises

10 57A. (1) A landlord may give notice of termination of a residential tenancy agreement to the tenant on the ground that the landlord has (after entering into the agreement) entered into a contract for the sale of the residential premises under which the landlord is required to give vacant possession.

15 (2) The notice of termination must not specify a day earlier than the period of 60 days after the day on which the notice is given as the day on which vacant possession of the residential premises is to be delivered up to the landlord.

20 (3) If the date for completion of the contract for sale occurs after the end of the 60-day period, the tenant is not required to deliver up vacant possession of the residential premises until that date.

25 (4) After receiving the landlord's notice of termination, the tenant may give a notice of termination to the landlord. The tenant's notice may specify a day that is before the day on which the tenant is required to deliver up vacant possession under subsection (2) or (3) and that is not less than 14 days after the date on which the tenant's notice is
30 given to the landlord.

35 (5) A tenant who has not received a notice of termination from the landlord under this section but who becomes aware that the residential premises are being sold or offered for sale by the landlord, may give a notice of termination to the landlord. The tenant's notice may specify a day that is not less than 14 days after the date on which the tenant's notice is given to the landlord.

Residential Tenancies (Amendment) 1994

SCHEDULE 1—AMENDMENTS—*continued*

However, if the day specified by the tenant is later than the date for completion of a contract for the sale of the residential premises, the tenant's notice is taken to specify the date for completion as the date for termination.

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Notice of termination by landlord—conversion, major renovation, change of use or demolition of premises

57B. (1) A landlord may give notice of termination of a residential tenancy agreement to the tenant on the ground that the landlord proposes:

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(a) to bring the title to the land on which the residential premises are situated under the Strata Titles Act 1973, the Strata Titles (Leasehold) Act 1986 or the Community Land Development Act 1989; or

(b) to carry out major renovations to the residential premises that are not practicable without vacant possession; or

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(c) to change the use of the residential premises to a non-residential use; or

(d) to demolish the residential premises.

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(2) The notice of termination must not be given unless the landlord has obtained all approvals and consents (and any other authorities) necessary to give effect to the proposal.

(3) The notice of termination must not specify a day earlier than 60 days after the day on which the notice is given on which vacant possession of the residential premises is to be delivered up to the landlord.

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Notice of termination by landlord—use of premises as principal residence

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57C. (1) A landlord may give notice of termination of a residential tenancy agreement to the tenant on the ground that the landlord intends to occupy the residential premises as the landlord's principal place of residence.

Residential Tenancies (Amendment) 1994

SCHEDULE 1—AMENDMENTS—*continued*

5 (2) The notice of termination must not specify a day earlier than 60 days after the day on which the notice is given on which vacant possession of the residential premises is to be delivered up to the landlord.

(3) However, if:

10 (a) the residential premises were, immediately before the landlord entered into the residential tenancy agreement, the landlord's principal place of residence; and

15 (b) the residential tenancy agreement includes a statement that the residential premises were, immediately before the landlord entered into the residential tenancy agreement, the landlord's principal place of residence and that the landlord intends to resume occupancy of the premises on termination of the agreement; and

(c) the residential tenancy agreement is for a fixed term,

20 the landlord may, before or after the end of the term of the residential tenancy agreement, give notice of termination of the agreement to the tenant specifying a day that is not earlier than 30 days after the day on which the notice is given and not earlier than the end of the fixed term as the
25 day on which vacant possession of the residential premises is to be delivered up to the landlord.

Notice of termination by landlord—breach of agreement by tenant (other than arrears of rent)

30 57D. (1) If a tenant has breached a residential tenancy agreement (otherwise than in relation to the payment of rent), the landlord may give notice to the tenant to remedy the breach within a period of not less than 30 days after the day on which the notice is given to the tenant.

35 (2) A landlord may give notice of termination of a residential tenancy agreement to the tenant on the ground

Residential Tenancies (Amendment) 1994

SCHEDULE 1—AMENDMENTS—*continued*

that the tenant has failed to remedy a breach of the agreement within the period specified by a notice under subsection (1).

(3) The notice of termination must not specify 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 delivered up to the landlord. 5

(4) If the tenant remedies the breach specified in the notice under subsection (1) before the day specified in the notice of termination, the notice of termination ceases to have effect and no further notice of termination may be given in respect of that breach. 10

Notice of termination by landlord—arrears of rent

57E. (1) If a tenant has failed to pay rent in accordance with the residential tenancy agreement, the landlord may give notice to the tenant to pay the arrears of rent within a period of not less than 14 days after the day on which the notice is given to the tenant. 15

(2) A landlord may give notice of termination of a residential tenancy agreement to the tenant on the ground that the tenant has failed to remedy a breach of the agreement within the period specified by a notice under subsection (1). 20

(3) The notice of termination must not specify 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 delivered up to the landlord. 25

(4) If the tenant pays all arrears of rent to which a notice under subsection (1) applies before the day specified in the notice of termination, the notice of termination ceases to have effect and no further notice of termination may be given in respect of those arrears. 30

Residential Tenancies (Amendment) 1994

SCHEDULE 1—AMENDMENTS—*continued*

(8) Section 58:

Omit the section, insert instead:

5 **Notice of termination by landlord without any
ground—relocatable homes and registrable moveable
dwellings**

10 58. (1) This section applies to a residential tenancy
agreement in respect of residential premises to which a
relevant code of practice applies, being premises consisting
of a site on which:

(a) a relocatable home; or

(b) a registrable moveable dwelling with a rigid annex
attached to it,

15 (not being a home or dwelling owned or provided by the
landlord) is situated or proposed to be situated.

(2) A landlord may give notice of termination of a
residential tenancy agreement to which this section applies
without specifying any ground for the termination.

20 (3) A notice of termination given under this section
must not specify a day earlier than 180 days after the day
on which the notice is given as the day on which vacant
possession of the residential premises is to be delivered up
to the landlord.

25 (4) This section does not apply to a residential tenancy
agreement that creates a tenancy for a fixed term during
the currency of the term.

(9) Section 59 (**Notice of termination by tenant without any
ground**):

30 (a) From section 59 (2), omit “21 days”, insert instead “14
days”.

(b) Omit section 59 (3).

Residential Tenancies (Amendment) 1994

SCHEDULE 1—AMENDMENTS—*continued*

(10) Section 61:

Omit the section, insert instead:

Order for termination where agreement frustrated

61. (1) If residential premises under a residential tenancy agreement, otherwise than as a result of a breach of the agreement:

(a) are destroyed; or

(b) are rendered wholly or partly inhabitable; or

(c) cease to be lawfully usable for the purpose of a residence; or

(d) are acquired by any authority by compulsory process,

the landlord or the tenant may apply to the Tribunal for an order under this section.

(2) The Tribunal, on an application under subsection (1), may do any one or more of the following:

(a) make an order terminating the residential tenancy agreement;

(b) make an order for the abatement of rent from such date as may be specified by the Tribunal;

(c) make an order that the landlord pay to the tenant compensation for the tenant's loss of the tenancy (without affecting any entitlement to compensation the tenant may have where the residential premises are acquired by any authority by compulsory process).

(11) Section 69 (**Tribunal may terminate residential tenancy agreement where landlord would otherwise suffer undue hardship**):

After section 69 (1), insert:

(1A) The Tribunal may not make an order under this section if any hardship that may be suffered by the landlord is caused by the acts or omissions of the landlord.

Residential Tenancies (Amendment) 1994

SCHEDULE 1—AMENDMENTS—*continued*(12) Section 72 (**Recovery of possession of residential premises prohibited except by order**):

After section 72 (1), insert:

- 5 (1A) An order of a court or the Tribunal for the recovery of possession cannot take effect until at least 7 days have elapsed from the day on which the residential tenancy agreement was terminated, unless the agreement was terminated under section 68.

10 (13) Section 94 (**Presentation of cases**):

After section 94 (3), insert:

- 15 (3A) If an application for representation is made to the Tribunal by a party to proceedings before it, the Tribunal must inform the other parties that they are entitled to object to the application.

(3B) Despite the other provisions of this section, a tenant is entitled to be represented by another person if:

- 20 (a) the landlord is the Department of Housing or the New South Wales Land and Housing Corporation;
or
(b) the landlord is represented by a managing agent or a legal practitioner; or
(c) the landlord is a real estate agent, a legal practitioner, a tenancy worker (being a person employed by a tenancy advice or advocacy service or by a community legal centre in a tenancy capacity), a person acting on behalf of a community housing organisation (being an incorporated body whose major activity is the provision of low cost housing), or a person acting on behalf of the owner or manager of a caravan park or a manufactured home estate (within the meaning of the Local Government Act 1993).

- 35 (3C) A party who is permitted or entitled to be represented may be represented by any person, including a legal practitioner.

Residential Tenancies (Amendment) 1994

SCHEDULE 1—AMENDMENTS—*continued*

(14) Section 138:

After section 137, insert:

Other savings and transitional provisions

138. Schedule 5 has effect.

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(15) Schedule 5:

At the end of the Act, insert:

**SCHEDULE 5—SAVINGS, TRANSITIONAL AND
OTHER PROVISIONS CONSEQUENT ON
ENACTMENT OF AMENDING LEGISLATION**

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(Sec. 138)

PART 1—PRELIMINARY

Regulations

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

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Residential Tenancies (Amendment) Act 1994

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

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(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or

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(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

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Residential Tenancies (Amendment) 1994

SCHEDULE 1—AMENDMENTS—*continued***PART 2—PROVISIONS CONSEQUENTIAL ON
ENACTMENT OF RESIDENTIAL TENANCIES
(AMENDMENT) ACT 1994****5 Application of amendments to residential tenancy
 agreements**

2. The amendments made by the Residential Tenancies
(Amendment) Act 1994 extend to residential tenancy
10 agreements entered into before the commencement of
 those amendments.

Excessive rent increases

3. The amendment made to section 46 by the Residential
Tenancies (Amendment) Act 1994 does not apply to a
15 notice of a rent increase given before the commencement
 of the amendment.

**Application of amendments to proceedings before the
Tribunal**

4. Sections 69 and 94, as amended by the Residential
Tenancies (Amendment) Act 1994, extend to proceedings
20 before the Tribunal at the commencement of that Act.
