



New South Wales

Residential Tenancies Amendment (Social Housing) Act 2018 No 45

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New South Wales

Residential Tenancies Amendment (Social Housing) Act 2018 No 45

Act No 45, 2018

An Act to amend the *Residential Tenancies Act 2010* and the *Housing Act 2001* with respect to social housing tenancy agreements; and for other purposes. [Assented to 21 August 2018]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Residential Tenancies Amendment (Social Housing) Act 2018*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of Residential Tenancies Act 2010 No 42

[1] Section 154FA

Insert before section 154G:

154FA Termination by Tribunal in certain cases of tenant fraud

- (1) This section applies to social housing tenancy agreements under which the landlord is the New South Wales Land and Housing Corporation.
- (2) The Tribunal must, on application by the landlord, make a termination order if it is satisfied that the tenant has been found guilty of an offence under section 69 or 69A of the *Housing Act 2001*.
- (3) Before making an application, the landlord must advise the tenant, by notice in writing, of the decision to do so and the grounds on which the application is to be made. However, the landlord may make an application under this section without giving the tenant a termination notice.
- (4) The Tribunal may make a termination order under this section that takes effect before the end of the fixed term if the social housing tenancy agreement is a fixed term agreement.
- (5) The Tribunal is not required to make a termination order under this section if the tenant satisfies the Tribunal that there are exceptional circumstances that justify the order not being made.
- (6) If the Tribunal does not make a termination order as a consequence of subsection (5), the Tribunal must provide written reasons for the decision.

[2] Part 7, Division 8

Insert after section 156B:

Division 8 Rental bonds

156C Termination notice for non-payment of rental bond

- (1) This section applies to social housing tenancy agreements under which the landlord is the New South Wales Land and Housing Corporation or the Aboriginal Housing Office.
- (2) A landlord may give a termination notice to a tenant if the tenant fails to pay all or part of a rental bond.
- (3) A termination notice may be given under this section whether the tenant was required to pay the rental bond at the time the tenant entered into the social housing tenancy agreement or at a later time.
- (4) The termination notice must specify a termination date that is not earlier than 14 days after the day on which the notice is given.
- (5) The termination notice may specify a termination date that is before the end of the fixed term of the social housing tenancy agreement if it is a fixed term agreement.
- (6) Sections 88 and 89 (1)–(4) apply to a failure to pay a rental bond in the same way as they apply to a failure to pay rent under a residential tenancy agreement. For that purpose, a reference in those sections to rent is to be read as a reference to a rental bond and a reference to a non-payment termination notice is to be read as a termination notice under this section.

156D Payment of rental bond during social housing tenancy agreements

- (1) This section applies to social housing tenancy agreements under which the landlord is the New South Wales Land and Housing Corporation or the Aboriginal Housing Office.
- (2) A landlord may, at any time before the end of a social housing tenancy agreement, require the tenant to pay a rental bond in accordance with Part 8.
Note. Part 8 applies to a rental bond required to be paid under this section in the same way as it applies to a rental bond required to be paid under the original terms of a residential tenancy agreement.
- (3) A tenant may be required to pay a rental bond under this section only if:
 - (a) the tenant did not pay a rental bond at the time the tenant entered into the social housing tenancy agreement, and
 - (b) the tenant belongs to a class of tenant specified in the rental bond guidelines, and
 - (c) the tenant is given a written notice by the landlord or the landlord's agent specifying the amount of the rental bond payable and the day by which it must be paid, and
 - (d) the notice is given at least 14 days before the rental bond is payable, and
 - (e) the amount of the rental bond is determined in accordance with the rental bond guidelines.
- (4) This section does not affect the right of a landlord under Part 8 to require a tenant to pay a rental bond at the time the tenant enters into a residential tenancy agreement.
- (5) The rental bond guidelines are to be made publicly available.
- (6) A copy of the rental bond guidelines is to be provided, on request, to any tenant to which this section applies free of charge and to other persons either free of charge or on payment of reasonable copying charges.
- (7) In this section, **rental bond guidelines** means any guidelines approved by the Minister for the purposes of this section.

[3] Section 162 Deposit of rental bonds

Insert "or at any time after" after "commencing on" in section 162 (2).

[4] Schedule 2 Savings, transitional and other provisions

Omit clause 1 (1). Insert instead:

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.

[5] Schedule 2

Insert after Part 5:

Part 6 Provisions consequent on enactment of Residential Tenancies Amendment (Social Housing) Act 2018

19 Definition

In this Part, **amending Act** means the *Residential Tenancies Amendment (Social Housing) Act 2018*.

20 Termination orders in tenant fraud cases

Section 154FA, as inserted by the amending Act, applies only in respect of a tenant who, after the insertion of that section, is found guilty of an offence under section 69 or 69A of the *Housing Act 2001*, whether the offence was committed before or after the insertion.

21 Rental bonds in social housing tenancy agreements

Division 8 of Part 7 of this Act, as inserted by the amending Act, extends to a social housing tenancy agreement under which the landlord is the New South Wales Land and Housing Corporation or the Aboriginal Housing Office that was entered into before the insertion of that Division.

Schedule 2 Amendment of Housing Act 2001 No 52

[1] Section 58A Definitions

Insert in alphabetical order:

approved community housing provider means a registered community housing provider approved by the Minister for the purposes of this Part.

relevant authority means:

- (a) in the case of a tenant renting public housing—the Secretary, or
- (b) in the case of a tenant renting housing subject to a concurrent lease to an approved community housing provider—the approved community housing provider.

[2] Section 58B Termination of lease of registrable person in certain circumstances

Insert after section 58B (1):

- (1A) An approved community housing provider may, on the recommendation of the Commissioner of Police, by written order terminate the lease of a tenant who is renting housing subject to a concurrent lease to the approved community housing provider and who is a registrable person.
- (1B) An approved community housing provider may make an order under this section only with the approval of the Secretary.

[3] Sections 58B (2) and (3) and 58D (2)

Omit “public” wherever occurring.

[4] Section 58B (4)

Omit “of the Secretary”.

[5] Section 58B (4) (a) and (b)

Insert “or the approved community housing provider (as the case requires)” after “Corporation” wherever occurring.

[6] Section 58C Provision of alternative housing

Omit “Secretary” wherever occurring. Insert instead “relevant authority”.

[7] Section 58C (1)

Insert “or housing subject to a concurrent lease” after “public housing”.

[8] Section 58D No compensation payable

Omit “Secretary” from section 58D (2). Insert instead “relevant authority”.

[9] Section 58F Protection of exercise of functions under this Part

Omit section 58F (1). Insert instead:

- (1) This section applies to a function (a *protected function*) conferred or imposed on any of the following persons (*protected persons*) by or under this Part:
 - (a) the Secretary (including a delegate of the Secretary),
 - (b) the Commissioner of Police (including a delegate of the Commissioner),
 - (c) an approved community housing provider.

[10] Section 69 False or misleading statements

Omit section 69 (1). Insert instead:

- (1) A person is guilty of an offence if the person:
 - (a) makes a statement (whether orally, in a document or in any other way) knowing that the statement:
 - (i) is false or misleading, or
 - (ii) omits any matter or thing without which the statement is misleading, and
 - (b) the statement is made to:
 - (i) obtain or claim a benefit from the Corporation or the Secretary, or
 - (ii) deceive any member of staff of the Corporation or the Department in relation to obtaining a benefit from the Corporation or the Secretary, or
 - (iii) affect the rate or amount of benefit from the Corporation or the Secretary.

Maximum penalty: 3 months imprisonment or 20 penalty units, or both.

[11] Section 69 (2)

Omit “from the Corporation accommodation or any rental rebate or any other advantage or concession”.

Insert instead “a benefit from the Corporation or the Secretary”.

[12] Section 69 (4)

Insert after section 69 (3):

- (4) In this section:
benefit means any accommodation, rental rebate, rental subsidy or any other advantage or concession.

[13] Section 69A Failure to notify of change of circumstances

Omit “Corporation” wherever occurring in section 69A (1) and (2).

Insert instead “appropriate body”.

[14] Section 69A (3)

Insert in alphabetical order:

appropriate body means:

- (a) in the case of a benefit from the Corporation—the Corporation, or
- (b) in the case of a benefit from the Secretary—the Secretary.

[15] Section 69A (3), definition of “benefit”

Omit the definition. Insert instead:

benefit has the same meaning as it has in section 69.

[16] Section 69B Access to information for preventing, investigating or prosecuting fraud

Insert “or the Secretary” after “Corporation” where firstly occurring in section 69B (1).

[17] Section 69B (1)

Insert “or the Secretary (as the case requires)” after “Corporation” where secondly occurring.

[18] Section 69B (2) and (3)

Insert “or the Secretary” after “Corporation” wherever occurring.

[19] Section 69C Power to obtain information, documents and evidence to prevent or investigate fraud

Insert “or the Secretary” after “Corporation” where firstly occurring in section 69C (1).

[20] Section 69C (1)

Insert “or the Secretary (as the case requires)” after “Corporation” where secondly occurring.

[21] Section 69C (2)

Insert “or the Secretary” after “Corporation” wherever occurring.

[22] Section 73 Recovery of amounts due to Corporation and Secretary

Insert after section 73 (2):

(3) The Secretary may, by written notice, require a person to repay an amount paid to the person (or on the person’s behalf) by the Secretary by way of a rental subsidy if the Secretary is satisfied that the person is not entitled to the amount because the person obtained the amount by fraud.

(4) Any such amount is recoverable by the Secretary as a debt due to the Crown.

[23] Section 74 Proceedings for offences

Insert “, except as provided for by subsection (2A)” after “Corporation” in section 74 (2).

[24] Section 74 (2A)

Insert after section 74 (2):

(2A) A prosecution or proceeding in respect of an offence against section 69, 69A or 69C that relates to a benefit from the Secretary or fraud against the Secretary may be instituted by or on behalf of the Secretary.

[25] Section 74 (3)–(5)

Insert “or the Department” after “Corporation” wherever occurring.

[26] Schedule 3 Savings, transitional and other provisions

Insert after Part 5:

Part 6 Provisions consequent on enactment of Residential Tenancies Amendment (Social Housing) Act 2018

19 Definition

In this Part, *amending Act* means the *Residential Tenancies Amendment (Social Housing) Act 2018*.

20 Housing of registrable persons

Part 7A of this Act, as amended by the amending Act, extends to a concurrent lease entered into under section 13A before the commencement of those amendments.

21 Failure to notify Secretary of change of circumstances

- (1) Section 69A, as amended by the amending Act, extends to a change in a person's circumstances that occurred before the commencement of the amendment but only if the change continues to affect the person's entitlement to a rental subsidy or any other advantage or concession from the Secretary after the commencement of the amendment.
- (2) A change in circumstances referred to in subclause (1) must be notified to the Secretary within 28 days after the commencement of the amendment to section 69A.

22 Recovery of amounts due to Secretary

Section 73 (3) and (4), as inserted by the amending Act, extend to any amount paid by the Secretary by way of a rental subsidy before the insertion of those subsections.

Schedule 3 Amendment of Residential Tenancies Regulation 2010

Clause 13

Insert before clause 14:

13 New South Wales Land and Housing Corporation and Aboriginal Housing Office not required to use online rental bond service

The New South Wales Land and Housing Corporation and the Aboriginal Housing Office are exempt from the operation of section 159 (1A) of the Act.

[Second reading speech made in—

Legislative Assembly on 21 June 2018

Legislative Council on 15 August 2018]