



New South Wales

Residential Tenancies Amendment (Social Housing) Bill 2018

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Residential Tenancies Act 2010* and the *Housing Act 2001* as follows:

- (a) to enable the New South Wales Land and Housing Corporation (the *Corporation*) and the Aboriginal Housing Office (the *AHO*) to require a tenant to pay a rental bond at any time after a residential tenancy agreement has commenced (if a bond was not paid at the beginning of the agreement),
- (b) to provide for guidelines approved by the Minister for Social Housing to specify the classes of tenants in Corporation and AHO residential tenancy agreements who may be required to pay a rental bond during an agreement and to provide for the amount of rental bond payable,
- (c) to provide that the Corporation and the AHO may give a tenant a termination notice, and the New South Wales Civil and Administrative Tribunal (*NCAT*) may order the termination of a Corporation or AHO residential tenancy agreement, if the tenant fails to pay all or part of a rental bond, whether the bond was required to be paid at the beginning or during the agreement,
- (d) to provide that a tenant in a Corporation or AHO residential tenancy agreement who pays the outstanding rental bond or enters into a repayment plan, after being given a termination notice or order, will not be required to vacate the premises and the residential tenancy agreement will not be terminated,
- (e) to require NCAT to terminate a Corporation residential tenancy agreement if the tenant has been found guilty of a fraud offence under section 69 or 69A of the *Housing Act 2001* unless there are exceptional circumstances,

- (f) to enable certain community housing providers to terminate a residential tenancy agreement of a tenant who is a registrable person (within the meaning of the *Child Protection (Offenders Registration) Act 2000*) in the same way as the Secretary of the Department of Family and Community Services (the **FaCS Secretary**) is able to terminate a residential tenancy agreement of a public housing tenant who is a registrable person,
- (g) to provide that the residential tenancy agreement of a registrable person may only be terminated by a community housing provider on the recommendation of the Commissioner of Police and with the approval of the FaCS Secretary,
- (h) to require alternative housing to be made available to the registrable person,
- (i) to update offences relating to public housing tenant fraud and to extend the offences so that they apply to fraud arising in relation to rental subsidies or other benefits paid by the FaCS Secretary to tenants who are not in public housing,
- (j) to give the FaCS Secretary access to information and investigative powers for the purposes of preventing and investigating fraud against the FaCS Secretary, similar to the Corporation's existing powers,
- (k) to enable the FaCS Secretary to recover any rental subsidy or other benefit paid to a person if the person was not entitled to the rental subsidy or other benefit because it was obtained by fraud,
- (l) to make other minor and consequential amendments.

The Bill also makes a consequential amendment to the *Residential Tenancies Regulation 2010* to enable the Corporation and AHO to collect rental bonds from tenants without having to use the online rental bond service established by the Commissioner for Fair Trading.

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 the date of assent to the proposed Act.

Schedule 1 Amendment of Residential Tenancies Act 2010 No 42

Termination of Corporation tenancy agreements if tenant found guilty of fraud under Housing Act 2001

Schedule 1 [1] provides that NCAT must make an order terminating a social housing tenancy agreement under which the landlord is the Corporation if the tenant has been found guilty of an offence under section 69 or 69A of the *Housing Act 2001*. Those sections prohibit a person from making a false or misleading statement, acting fraudulently or failing to notify the Corporation or the FaCS Secretary of a relevant change in circumstances, in relation to claiming any accommodation, rental rebate, rental subsidy or other benefit from the Corporation or the FaCS Secretary. See Schedule 2 [10]–[15] for related amendments to those sections.

NCAT must make a termination order on an application by the landlord, but is not required to make an order if the tenant satisfies NCAT that there are exceptional circumstances. Before making an application, the landlord must notify the tenant in writing but is not required to give the tenant a termination notice.

Rental bonds in Corporation and AHO tenancy agreements

Schedule 1 [2] makes further provision for rental bonds in social housing tenancy agreements where the landlord is the Corporation or the AHO. Currently, a landlord in any residential tenancy agreement, including a social housing tenancy agreement, can require the tenant to pay a rental bond at the time the agreement is entered into. Proposed section 156D enables the Corporation and the AHO to require a tenant to pay a rental bond at any time after the agreement has

commenced. The provisions of the *Residential Tenancies Act 2010* that apply in respect of a rental bond payable at the time a residential tenancy agreement is entered into apply in the same way to a rental bond required to be paid by a tenant in a Corporation or AHO social housing tenancy agreement at a later time.

A tenant in a Corporation or AHO social housing tenancy agreement may be required to pay a rental bond during the agreement only if a rental bond was not paid at the beginning of the agreement and if the tenant belongs to a class of tenant specified in guidelines approved by the Minister for Social Housing. A tenant is to be given, at least 14 days before the due date, written notice of the rental bond amount and the day by which it is to be paid. The amount of rental bond payable is to be determined in accordance with the guidelines.

Provisions relating to the non-payment of rent in a residential tenancy agreement will apply, so that a termination notice given by the Corporation or the AHO for non-payment of a rental bond may only be given if the rental bond is more than 14 days overdue. A termination notice must inform the tenant that if the outstanding rental bond is paid, or if the tenant enters into, and complies with, a repayment plan agreed with the Corporation or the AHO, the tenant will not be required to vacate the premises. NCAT may not make a termination order if the tenant pays the outstanding rental bond, or enters into, and complies with, a repayment plan.

Proposed section 156C enables the Corporation and the AHO to give a notice terminating the social housing tenancy agreement to a tenant who fails to pay all or part of a rental bond, whether the bond was required to be paid at the time the tenant entered into the agreement or at a later time.

Schedule 1 [3] is a consequential amendment.

Savings and transitional provisions

Schedule 1 [4] enables savings and transitional regulations to be made as a consequence of the proposed Act or any other Act that amends the *Residential Tenancies Act 2010*.

Schedule 1 [5] contains savings and transitional provisions.

Schedule 2 Amendment of Housing Act 2001 No 52

Termination of social housing leases of registrable persons

Schedule 2 [1] and [2] extend a provision that enables the FaCS Secretary to terminate the lease of a public housing tenant who is a registrable person (within the meaning of the *Child Protection (Offenders Registration) Act 2000*) so that community housing providers approved by the Minister that are landlords under a concurrent lease with the Corporation may also terminate the lease of a registrable person in the same way. A community housing provider may terminate a lease only on the recommendation of the Commissioner of Police and with the approval of the FaCS Secretary.

Schedule 2 [6] and [7] provide that alternative housing is to be made available to registrable persons whose social housing tenancy agreements are terminated.

Schedule 2 [8] and [9] extend the provisions that apply to the exercise of functions by the FaCS Secretary and the Commissioner of Police in relation to terminating the lease of a registrable person, so that they apply to a community housing provider who terminates the lease of a registrable person in the same way. No compensation will be payable and the exercise of functions by a community housing provider cannot be challenged or reviewed before a court or administrative review body.

Schedule 2 [3]–[5] are consequential amendments.

Fraud offences

Schedule 2 [10] updates the offence of making a false statement in relation to obtaining benefits from the Corporation and extends it to benefits (such as a rental subsidy) paid by the FaCS Secretary. **Schedule 2 [12]** defines *benefit* to mean any accommodation, rental rebate, rental subsidy or any other advantage or concession. The updated offence makes a person guilty of an offence if the person makes a statement knowing that the statement is false or misleading or omits

something without which the statement is misleading and if the statement is made to obtain or claim a benefit from the Corporation or the FaCS Secretary, to deceive a member of the staff of the Corporation or FaCS or to affect the rate or amount of a benefit. The maximum penalty remains imprisonment for 3 months or 20 penalty units (currently, \$2,200) or both.

Schedule 2 [11] extends the offence of obtaining a benefit from the Corporation by fraud so that it applies to obtaining a rental subsidy or other benefit from the FaCS Secretary. The maximum penalty is imprisonment for 3 months or 20 penalty units (currently, \$2,200) or both.

Schedule 2 [13] extends the offence of failing to notify the Corporation of any change of relevant circumstances within 28 days, with the intention of retaining or continuing to obtain a benefit, so that it applies in relation to rental subsidies and other benefits paid by the FaCS Secretary. **Schedule 2 [14] and [15]** are consequential amendments.

Power to investigate fraud

Schedule 2 [16] gives the FaCS Secretary the same access to information that the Corporation has in relation to fraud against the Corporation. For the purposes of preventing or investigating fraud, the FaCS Secretary may request, collect, use and disclose certain information, including personal information and information in relation to driver licences, registrable vehicles and property. **Schedule 2 [17] and [18]** are consequential amendments.

Schedule 2 [19] gives the FaCS Secretary the same investigative powers that the Corporation has in relation to fraud against the Corporation. The FaCS Secretary may, in certain circumstances, require a person to provide information, produce documents or give evidence for the purposes of preventing or investigating fraud against the FaCS Secretary. A person who fails to comply with such a requirement is guilty of an offence (maximum penalty 20 penalty units, currently \$2,200). **Schedule 2 [20] and [21]** are consequential amendments.

Proceedings for fraud offences

Schedule 2 [24] provides that proceedings for fraud offences in relation to rental subsidies or other benefits paid by the FaCS Secretary are to be dealt with summarily before the Local Court and are to be instituted by the FaCS Secretary. Other offences against the *Housing Act 2001* are also dealt with summarily by the Local Court but are instituted by the Corporation. **Schedule 2 [23] and [25]** are consequential amendments.

Recovery of amounts due to FaCS Secretary

Schedule 2 [22] enables the FaCS Secretary to recover any rental subsidy or other benefit paid to a person if the person was not entitled to the rental subsidy or other benefit because it was obtained by fraud.

Savings and transitional provisions

Schedule 2 [26] contains savings and transitional provisions.

Schedule 3 Amendment of Residential Tenancies Regulation 2010

Schedule 3 exempts the Corporation and the AHO from having to use the online rental bond service established by the Commissioner for Fair Trading under the *Residential Tenancies Act 2010* in relation to rental bonds received from their tenants.



New South Wales

Residential Tenancies Amendment (Social Housing) Bill 2018

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New South Wales

Residential Tenancies Amendment (Social Housing) Bill 2018

No. , 2018

A Bill for

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.

The Legislature of New South Wales enacts:

1

1 Name of Act

2

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

3

2 Commencement

4

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

5

Schedule 1	Amendment of Residential Tenancies Act 2010	1
	No 42	2
[1]	Section 154FA	3
	Insert before section 154G:	4
154FA	Termination by Tribunal in certain cases of tenant fraud	5
(1)	This section applies to social housing tenancy agreements under which the landlord is the New South Wales Land and Housing Corporation.	6 7
(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 <i>Housing Act 2001</i> .	8 9 10
(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.	11 12 13 14
(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.	15 16 17
(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.	18 19 20
(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.	21 22
[2]	Part 7, Division 8	23
	Insert after section 156B:	24
	Division 8	25
	Rental bonds	25
156C	Termination notice for non-payment of rental bond	26
(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.	27 28 29
(2)	A landlord may give a termination notice to a tenant if the tenant fails to pay all or part of a rental bond.	30 31
(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.	32 33 34
(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.	35 36
(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.	37 38 39
(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.	40 41 42 43 44

156D	Payment of rental bond during social housing tenancy agreements	1
(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 3 4
(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.	5 6
	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.	7 8 9
(3)	A tenant may be required to pay a rental bond under this section only if:	10
(a)	the tenant did not pay a rental bond at the time the tenant entered into the social housing tenancy agreement, and	11 12
(b)	the tenant belongs to a class of tenant specified in the rental bond guidelines, and	13 14
(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	15 16 17
(d)	the notice is given at least 14 days before the rental bond is payable, and	18
(e)	the amount of the rental bond is determined in accordance with the rental bond guidelines.	19 20
(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.	21 22 23
(5)	The rental bond guidelines are to be made publicly available.	24
(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.	25 26 27
(7)	In this section, <i>rental bond guidelines</i> means any guidelines approved by the Minister for the purposes of this section.	28 29
[3]	Section 162 Deposit of rental bonds	30
	Insert "or at any time after" after "commencing on" in section 162 (2).	31
[4]	Schedule 2 Savings, transitional and other provisions	32
	Omit clause 1 (1). Insert instead:	33
(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.	34 35
[5]	Schedule 2	36
	Insert after Part 5:	37
Part 6	Provisions consequent on enactment of Residential Tenancies Amendment (Social Housing) Act 2018	38 39
19	Definition	40
	In this Part, <i>amending Act</i> means the <i>Residential Tenancies Amendment (Social Housing) Act 2018</i> .	41 42

20	Termination orders in tenant fraud cases	1
	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 <i>Housing Act 2001</i> , whether the offence was committed before or after the insertion.	2 3 4 5
21	Rental bonds in social housing tenancy agreements	6
	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.	7 8 9 10

Schedule 2	Amendment of Housing Act 2001 No 52	1
[1] Section 58A Definitions		2
Insert in alphabetical order:		3
<i>approved community housing provider</i> means a registered community housing provider approved by the Minister for the purposes of this Part.		4
<i>relevant authority</i> means:		6
(a) in the case of a tenant renting public housing—the Secretary, or		7
(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.		8
[2] Section 58B Termination of lease of registrable person in certain circumstances		11
Insert after section 58B (1):		12
(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.		13
(1B) An approved community housing provider may make an order under this section only with the approval of the Secretary.		17
[3] Sections 58B (2) and (3) and 58D (2)		19
Omit “public” wherever occurring.		20
[4] Section 58B (4)		21
Omit “of the Secretary”.		22
[5] Section 58B (4) (a) and (b)		23
Insert “or the approved community housing provider (as the case requires)” after “Corporation” wherever occurring.		24
[6] Section 58C Provision of alternative housing		26
Omit “Secretary” wherever occurring. Insert instead “relevant authority”.		27
[7] Section 58C (1)		28
Insert “or housing subject to a concurrent lease” after “public housing”.		29
[8] Section 58D No compensation payable		30
Omit “Secretary” from section 58D (2). Insert instead “relevant authority”.		31
[9] Section 58F Protection of exercise of functions under this Part		32
Omit section 58F (1). Insert instead:		33
(1) This section applies to a function (a <i>protected function</i>) conferred or imposed on any of the following persons (<i>protected persons</i>) by or under this Part:		34
(a) the Secretary (including a delegate of the Secretary),		36
(b) the Commissioner of Police (including a delegate of the Commissioner),		37
(c) an approved community housing provider.		39

[10] Section 69 False or misleading statements	1
Omit section 69 (1). Insert instead:	2
(1) A person is guilty of an offence if the person:	3
(a) makes a statement (whether orally, in a document or in any other way) knowing that the statement:	4
(i) is false or misleading, or	5
(ii) omits any matter or thing without which the statement is misleading, and	6
(b) the statement is made to:	7
(i) obtain or claim a benefit from the Corporation or the Secretary, or	8
(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	9
(iii) affect the rate or amount of benefit from the Corporation or the Secretary.	10
Maximum penalty: 3 months imprisonment or 20 penalty units, or both.	11
[11] Section 69 (2)	12
Omit “from the Corporation accommodation or any rental rebate or any other advantage or concession”.	13
Insert instead “a benefit from the Corporation or the Secretary”.	14
[12] Section 69 (4)	15
Insert after section 69 (3):	16
(4) In this section:	17
<i>benefit</i> means any accommodation, rental rebate, rental subsidy or any other advantage or concession.	18
[13] Section 69A Failure to notify of change of circumstances	19
Omit “Corporation” wherever occurring in section 69A (1) and (2).	20
Insert instead “appropriate body”.	21
[14] Section 69A (3)	22
Insert in alphabetical order:	23
<i>appropriate body</i> means:	24
(a) in the case of a benefit from the Corporation—the Corporation, or	25
(b) in the case of a benefit from the Secretary—the Secretary.	26
[15] Section 69A (3), definition of “benefit”	27
Omit the definition. Insert instead:	28
<i>benefit</i> has the same meaning as it has in section 69.	29
[16] Section 69B Access to information for preventing, investigating or prosecuting fraud	30
Insert “or the Secretary” after “Corporation” where firstly occurring in section 69B (1).	31

[17] Section 69B (1)	1
Insert “or the Secretary (as the case requires)” after “Corporation” where secondly occurring.	2 3
[18] Section 69B (2) and (3)	4
Insert “or the Secretary” after “Corporation” wherever occurring.	5
[19] Section 69C Power to obtain information, documents and evidence to prevent or investigate fraud	6 7
Insert “or the Secretary” after “Corporation” where firstly occurring in section 69C (1).	8
[20] Section 69C (1)	9
Insert “or the Secretary (as the case requires)” after “Corporation” where secondly occurring.	10 11
[21] Section 69C (2)	12
Insert “or the Secretary” after “Corporation” wherever occurring.	13
[22] Section 73 Recovery of amounts due to Corporation and Secretary	14
Insert after section 73 (2):	15
(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.	16 17 18 19
(4) Any such amount is recoverable by the Secretary as a debt due to the Crown.	20
[23] Section 74 Proceedings for offences	21
Insert “, except as provided for by subsection (2A)” after “Corporation” in section 74 (2).	22
[24] Section 74 (2A)	23
Insert after section 74 (2):	24
(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 26 27
[25] Section 74 (3)–(5)	28
Insert “or the Department” after “Corporation” wherever occurring.	29
[26] Schedule 3 Savings, transitional and other provisions	30
Insert after Part 5:	31
Part 6 Provisions consequent on enactment of Residential Tenancies Amendment (Social Housing) Act 2018	32 33
19 Definition	34
In this Part, <i>amending Act</i> means the <i>Residential Tenancies Amendment (Social Housing) Act 2018</i> .	35 36

20	Housing of registrable persons	1
	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.	2 3 4
21	Failure to notify Secretary of change of circumstances	5
(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.	6 7 8 9 10
(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.	11 12 13
22	Recovery of amounts due to Secretary	14
	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.	15 16 17

Schedule 3	Amendment of Residential Tenancies Regulation	1
	2010	2
Clause 13		3
Insert before clause 14:		4
13	New South Wales Land and Housing Corporation and Aboriginal Housing Office not required to use online rental bond service	5
		6
	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.	7
		8