



New South Wales

# Residential Tenancies Amendment (Public Housing) Bill 2004

## 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 1987* (the *Principal Act*) to make provision for the following:

- (a) to enable the New South Wales Land and Housing Corporation (the *Corporation*) to declare that a public housing tenancy agreement is subject to a specified fixed term,
- (b) to enable the Corporation to request a public housing tenant to give an undertaking not to engage in anti-social behaviour (referred to as an *acceptable behaviour agreement*),
- (c) to provide for the termination of the tenant's public housing tenancy agreement if the tenant refuses to enter into, or seriously or persistently breaches, an acceptable behaviour agreement,
- (d) to provide for the termination of a public housing tenancy agreement if the tenant severely or persistently threatens or abuses, or intimidates or harasses, any member of staff of the Department of Housing.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision that gives effect to the amendments to the Principal Act set out in Schedule 1.

## Schedule 1 Amendments

**Schedule 1 [1]** inserts definitions of certain expressions for the purposes of the proposed amendments to the Principal Act.

**Schedule 1 [2]** inserts proposed section 14A into the Principal Act. The proposed section enables the Corporation to declare, by notice given to a tenant under a public housing tenancy agreement, that the agreement is subject to a fixed term from a date specified in the notice.

**Schedule 1 [3]** inserts proposed section 35A into the Principal Act. The proposed section enables the Corporation to request a public housing tenant to enter into an acceptable behaviour agreement under which the tenant undertakes not to engage in specified anti-social behaviour. The operation of any such undertaking extends to the behaviour of other lawful occupiers of the premises to which the applicable public housing tenancy agreement relates.

If the tenant fails or refuses to enter into an acceptable behaviour agreement, the Corporation may give notice of the termination of the tenancy agreement (under proposed section 57A as inserted by **Schedule 1 [4]**) and the Consumer, Trader and Tenancy Tribunal (the *Tribunal*) may terminate that agreement (under proposed section 64 (2A) as inserted by **Schedule 1 [5]**).

If the tenant enters into an acceptable behaviour agreement, the Corporation may give notice, under proposed section 57A, of the termination of the tenancy agreement on the grounds that a serious or persistent breach of the acceptable behaviour agreement has occurred and the Tribunal, under proposed section 64 (2A), may terminate the tenancy agreement if the tenant fails to satisfy the Tribunal that this ground has not been established.

**Schedule 1 [6]** makes an amendment to section 64 (4) to require the Tribunal, in considering the circumstances of a case that involves a public housing tenancy agreement, to have regard to the history of any prior tenancy of the tenant under any such agreement if that history is relevant.

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**Schedule 1 [8]** inserts proposed section 68A into the Principal Act, which enables the Tribunal to terminate a public housing tenancy agreement if a tenant severely or persistently threatens or abuses, or intimidates or harasses, any member of staff of the Department of Housing. Such conduct may involve making repeated telephone calls that cause intimidation or harassment.

**Schedule 1 [7]** provides for an amendment that is consequential on the amendment made by **Schedule 1 [8]**.

**Schedule 1 [9]** enables the making of regulations of a savings and transitional nature as a consequence of the enactment of the proposed Act.

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No. , 2004

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## A Bill for

An Act to amend the *Residential Tenancies Act 1987* to make further provision with respect to public housing tenancies; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Residential Tenancies Amendment (Public Housing) Act 2004</i> .	3 4
<b>2 Commencement</b>	5
This Act commences on a day or days to be appointed by proclamation.	6 7
<b>3 Amendment of Residential Tenancies Act 1987 No 26</b>	8
The <i>Residential Tenancies Act 1987</i> is amended as set out in Schedule 1.	9 10



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## Schedule 1 Amendments

(Section 3)

**[1] Section 3 Definitions**

Insert in alphabetical order in section 3 (1):

*acceptable behaviour agreement*—see section 35A.

*public housing tenancy agreement* means a residential tenancy agreement under which residential premises are let by the New South Wales Land and Housing Corporation, but does not include housing let to a person in accordance with the *HomeFund Restructuring Act 1993* or that is substituted for housing let in accordance with that Act.

**[2] Section 14A**

Insert after section 14:

**14A Special provisions relating to public housing tenancies**

- (1) The New South Wales Land and Housing Corporation may, by notice in writing given to a tenant under a public housing tenancy agreement the fixed term of which has ended, declare that the agreement is subject to a further fixed term specified in the notice from such date as is specified in the notice.
- (2) At the end of a fixed term declared under subsection (1) in relation to an agreement:
  - (a) any term of the agreement that provides for the continuation of the agreement applies, or
  - (b) if the agreement contains no such term—section 14 applies.
- (3) A declaration may be made under subsection (1) in relation to an agreement on more than one occasion.
- (4) The Minister may, from time to time, publish in the Gazette a policy in relation to the continuation of public housing tenancy agreements, including in relation to the making of a declaration by the Corporation under subsection (1).
- (5) This section has effect despite any other provision of this Act.

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<b>[3] Part 3, Division 3</b>	1
Insert after Division 2 of Part 3:	2
<b>Division 3 Acceptable behaviour agreements</b>	3
<b>35A Acceptable behaviour agreements for public housing tenants</b>	4
(1) The New South Wales Land and Housing Corporation may, by notice in writing given to a tenant under a public housing tenancy agreement, request the tenant to give a written undertaking (referred to in this Act as an <i>acceptable behaviour agreement</i> ), in the terms specified in the notice, not to engage in specified anti-social behaviour on any of the following:	5 6 7 8 9 10 11
(a) the premises to which the tenancy agreement relates,	12
(b) any property adjoining or adjacent to those premises (including any property that is available for use by the tenant in common with others).	13 14 15
(2) The operation of an acceptable behaviour agreement extends to the behaviour of any other person occupying (or jointly occupying) the premises with the consent of the tenant (a <i>lawful occupier</i> ). Accordingly, if any such lawful occupier engages in any anti-social behaviour that is specified in the agreement, the tenant is taken to have engaged in the behaviour and breached the agreement.	16 17 18 19 20 21 22
(3) The Corporation may request a tenant to enter into an acceptable behaviour agreement under subsection (1) only if the Corporation is of the opinion that, based on:	23 24 25
(a) the history of the tenancy concerned, or	26
(b) the history of any prior tenancy under a public housing tenancy agreement entered into by the tenant and the Corporation,	27 28 29
the tenant, or a lawful occupier of the premises to which the tenancy relates, is likely to engage in anti-social behaviour on those premises or any property adjoining or adjacent to those premises (including any property that is available for use by the tenant in common with others).	30 31 32 33 34

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(4)	In making a request under subsection (1), the Corporation must inform the tenant that if:	1
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(a)	the tenant fails or refuses to enter into an acceptable behaviour agreement as requested, or	3
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(b)	the tenant, after entering into such an agreement, seriously or persistently breaches the terms of the agreement,	5
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	the Corporation may give notice of the termination of the tenancy agreement entered into by the Corporation and the tenant.	8
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(5)	An acceptable behaviour agreement is of no effect unless the Corporation has complied with subsection (4) in relation to the agreement.	11
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(6)	In this section, a reference to anti-social behaviour includes a reference to emission of excessive noise, littering, dumping of cars, vandalism and defacing of property.	14
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<b>[4]</b>	<b>Section 57A</b>	17
	Insert after section 57:	18
<b>57A</b>	<b>Notice of termination of public housing tenancy agreement— acceptable behaviour agreements</b>	19
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(1)	The New South Wales Land and Housing Corporation may give notice of the termination of a public housing tenancy agreement to the tenant on either of the following grounds:	21
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(a)	the tenant has failed or refused to enter into an acceptable behaviour agreement as requested by the Corporation,	24
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(b)	the tenant has seriously or persistently breached the terms of an acceptable behaviour agreement.	27
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(2)	A notice of termination given under this section is not to 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 premises to which the tenancy agreement relates is to be delivered up to the Corporation.	29
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- (3) A notice of termination given under this section of a tenancy agreement that creates a tenancy for a fixed term is not ineffective because the day specified as the day on which vacant possession of the premises to which the tenancy agreement relates is to be delivered up to the Corporation is earlier than the day the term ends. 1  
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- [5] Section 64 Application to Tribunal by landlord for termination and order for possession** 7  
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- Insert after section 64 (2): 9
- (2A) The Tribunal is, on application by the New South Wales Land and Housing Corporation on a ground referred to in section 57A, to make an order terminating the agreement if: 10  
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- (a) in the case of the ground referred to in section 57A (1) (a): 13  
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- (i) the Corporation has requested, in accordance with section 35A, that the tenant enter into an acceptable behaviour agreement, and 15  
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- (ii) the Tribunal is satisfied that the tenant has failed or refused to do so, or 18  
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- (b) in the case of the ground referred to in section 57A (1) (b): 20  
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- (i) the Tribunal is satisfied that the tenant has entered into an acceptable behaviour agreement, and 22  
23  
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- (ii) the tenant has failed to satisfy the Tribunal that the tenant has not seriously or persistently breached the terms of that agreement. 25  
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- [6] Section 64 (4) (e)** 28
- Insert “, including, if the tenant is a tenant under a public housing tenancy agreement, any prior tenancy of the tenant arising under any such agreement” after “concerned”. 29  
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- [7] Section 64 (7)** 32
- Insert “or 68A” after “section 68”. 33

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<b>[8] Section 68A</b>	1
Insert after section 68:	2
<b>68A Tribunal may terminate public housing tenancy agreement for threat, abuse, intimidation or harassment</b>	3
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(1) The Tribunal may, on application by the New South Wales Land and Housing Corporation under a public housing tenancy agreement, make an order terminating the agreement if it is satisfied that the tenant has:	5
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(a) seriously or persistently threatened or abused any member of staff of the Department of Housing, or	9
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(b) intentionally engaged in conduct in relation to any such member of staff that would be reasonably likely to cause the member of staff to be intimidated or harassed (whether or not any abusive language or threat has been directed towards the member of staff).	11
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(2) If the Tribunal makes an order terminating an agreement under this section, the Tribunal is to also make an order for possession of the premises to which the agreement relates taking effect immediately.	16
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<b>[9] Schedule 4 Savings, transitional and other provisions</b>	20
Insert at the end of clause 1 (1):	21
<i>Residential Tenancies Amendment (Public Housing) Act 2004</i>	22