



New South Wales

Residential Tenancies Amendment (Rental Fairness) Bill 2023

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*, the *Property and Stock Agents Regulation 2022* and the *Residential Tenancies Regulation 2019* to—

- (a) prohibit advertising or otherwise offering a residential tenancy for premises unless a fixed amount is stated in the advertisement or offer as the amount of rent for the premises, and
- (b) prohibit the soliciting of amounts of rent for residential properties that are higher than the advertised amount, and
- (c) provide for additional regulation-making powers in relation to a rental bond roll-over scheme.

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.

Schedule 1 Amendment of Residential Tenancies Act 2010 No 42

Schedule 1[1] inserts sections 22A and 22B to provide that—

- (a) a landlord or a landlord's agent must state a fixed amount of rent for premises when advertising residential premises for rent, with a maximum penalty for contravention by an individual of 50 penalty units, or otherwise 100 penalty units, and

- (b) a person must not solicit or invite an offer of rent that is higher than the advertised amount or an amount offered for residential premises with a maximum penalty for an individual of 50 penalty units, or otherwise 100 penalty units, and
- (c) a landlord or a landlord's agent must give applicants for residential premises advice about an offer, and the amount of the offer, for the premises if the amount of the offer is higher than the advertised amount, with a maximum penalty for contravention by an individual of 50 penalty units, or otherwise 100 penalty units, and
- (d) if a landlord or a landlord's agent receives an offer of an amount of rent that is higher than the advertised amount of rent and another open house for the residential premises is to be held, the advertisement must be updated to indicate a higher amount of rent, with a maximum penalty for contravention by an individual of 50 penalty units, or otherwise 100 penalty units, and
- (e) the regulations may provide requirements for a person to provide information to the Commissioner for Fair Trading for the purpose of monitoring the operation of proposed sections 22A and 22B.

Schedule 1[2] provides that amounts credited to a Rental Bond Account are held on trust by the Rental Bond Board constituted under the *Residential Tenancies Act 2010*, Part 8, Division 4.

Schedule 1[3] and **[4]** amend section 186A to provide for additional regulation-making powers in relation to a rental bond roll-over scheme.

Schedule 2 Amendment of Property and Stock Agents Regulation 2022

Schedule 2 omits a redundant provision consequent on **Schedule 1[3]**.

Schedule 3 Amendment of Residential Tenancies Regulation 2019

Schedule 3 sets out the amount payable for a penalty notice under the proposed sections inserted by **Schedule 1[1]**.



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New South Wales

Residential Tenancies Amendment (Rental Fairness) Bill 2023

No. , 2023

A Bill for

An Act to amend the *Residential Tenancies Act 2010* to prohibit certain practices in relation to advertising or offering amounts of rent for residential premises, to provide for the transfer of rental bonds and to provide that amounts credited to the Rental Bond Account are held on trust by the Rental Bond Board; to amend the *Residential Tenancies Regulation 2019* to provide for certain penalty notice offences; to amend the *Property and Stock Agents Regulation 2022* to make a consequential amendment; and for related matters.

The Legislature of New South Wales enacts—

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1 Name of Act

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This Act is the *Residential Tenancies Amendment (Rental Fairness) Act 2023*.

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2 Commencement

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This Act commences as follows—

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- (a) for Schedules 1[1], 2 and 3—on a day or days to be appointed by proclamation,
- (b) otherwise—on the date of Assent to this Act.

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Schedule 1 **Amendment of Residential Tenancies Act 2010 No 42**

[1] **Sections 22A and 22B**

Insert before section 23—

22A Prohibition on certain matters relating to advertising or soliciting amounts of rent

- (1) A landlord or landlord's agent must not advertise or otherwise offer residential premises for rent unless a fixed amount of rent for the premises is stated in the advertisement or offer.
Maximum penalty—
 - (a) for an individual—50 penalty units, or
 - (b) otherwise—100 penalty units.
- (2) A person does not contravene subsection (1) merely by—
 - (a) placing a sign on or near the residential premises advertising or offering the premises for rent without stating the amount of rent for the premises on the sign, or
 - (b) communicating with an applicant in accordance with section 22B.
- (3) A person must not solicit or otherwise invite an offer of an amount of rent for residential premises, whether directly or indirectly, that is higher than the advertised amount of rent for the premises.
Maximum penalty—
 - (a) for an individual—50 penalty units, or
 - (b) otherwise—100 penalty units.
- (4) A person does not contravene subsection (3) merely by communicating with an applicant in accordance with section 22B.
- (5) The regulations may provide for matters relating to the provision of information by a person, at the times and in the way and form approved by the Secretary, for the purposes of monitoring the operation of this section and section 22B.

22B Prohibition on certain matters relating to offering amounts of rent

- (1) This section applies if a landlord or landlord's agent does not hold a holding deposit from an acceptable applicant for residential premises advertised or otherwise offered for rent.
- (2) If an acceptable applicant makes an offer of an amount of rent for the residential premises that is higher than the advertised amount of rent for the premises (a *higher offer*), the landlord or landlord's agent must—
 - (a) give all applicants for the premises written notice of the amount of the higher offer—
 - (i) within 1 business day after receiving the higher offer, and
 - (ii) before the first of the following happens—
 - (A) the landlord or landlord's agent accepts a holding deposit from the acceptable applicant for the premises,
 - (B) the landlord or landlord's agent notifies the acceptable applicant of the intention to enter into a residential tenancy agreement, and

(b)	if the landlord is considering the higher offer and another open house inspection by prospective tenants for the residential premises is proceeding—take all reasonable steps to change the advertisement for the rental of the premises to the highest offer that has been received from an acceptable applicant, and	1 2 3 4 5
(c)	advise each prospective tenant that inspects, or enquires about, the residential premises of the highest offer of an amount of rent from an acceptable applicant that has been received at the time of the inspection or enquiry.	6 7 8 9
	Maximum penalty—	10
(a)	for an individual—50 penalty units, or	11
(b)	otherwise—100 penalty units.	12
(3)	A landlord or landlord’s agent who gives written notice under subsection (2)(a) must keep a copy of the notice for at least 3 years after the day the notice is given.	13 14 15
	Maximum penalty—	16
(a)	for an individual—50 penalty units, or	17
(b)	otherwise—100 penalty units.	18
(4)	In this section—	19
	<i>applicant</i> , for residential premises, means a person who has lodged a tenancy application form for the premises.	20 21
	<i>acceptable applicant</i> means an applicant with whom the landlord would be willing to enter into a residential tenancy agreement.	22 23
[2]	Section 185 Rental Bond Account	24
	Insert after section 185(1)—	25
(1A)	Amounts credited to the Rental Bond Account are held on trust by the Rental Bond Board.	26 27
[3]	Section 186A Regulations may establish rental bond roll-over scheme	28
	Insert at the end of section 186A(2)(g)—	29
	including—	30
(i)	the ability of landlords to terminate tenancies on the grounds bonds have not been not paid in accordance with the scheme, and	31 32
(ii)	the power of the Tribunal to make termination orders if bonds are not paid in accordance with the scheme,	33 34
[4]	Section 186A(2)(ha)	35
	Insert after section 186A(2)(h)—	36
(ha)	matters relating to the administration of the scheme, including—	37
(i)	the Secretary’s powers in relation to the scheme, and	38
(ii)	the systems to be used to administer and manage the scheme, and	39
(iii)	the guarantee of payment of bonds to landlords,	40

Schedule 2	Amendment of Property and Stock Agents Regulation 2022	1
		2
Schedule 1	General rules of conduct applying to all agents and assistant agents	3
	Omit section 22.	4

