

[Act 1998 No 126]



New South Wales

Residential Tenancies Amendment (Social Housing) Bill 1998

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* in so far as that Act applies to social housing tenancies, so as to make further provision with respect to:

- (a) the class of matters that are taken by that Act to constitute a breach of a residential tenancy agreement, and
- (b) the matters to be taken into consideration by the Residential Tenancies Tribunal when hearing an application for termination of a tenancy by a landlord that is a social housing provider, and
- (c) the powers of the Tribunal in cases of actual or apprehended damage to property or threats to persons by tenants, and
- (d) the issue of warrants for possession of premises, and
- (e) rent increases, in so far as they affect tenants in receipt of rental subsidies.

* Amended in committee—see table at end of volume.

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 giving effect to the amendments to the *Residential Tenancies Act 1987* set out in Schedule 1.

Schedule 1 Amendments

Definitions relating to social housing

Schedule 1 [1] inserts definitions of *rent rebate*, *social housing premises* and *social housing provider* in section 3 of the Act.

Conditions of residential tenancy agreements

Section 23 of the Act sets out certain requirements that are taken to form part of every residential tenancy agreement, so that a failure to abide by these requirements constitutes a breach of the agreement and renders the tenancy liable to termination by the Residential Tenancies Tribunal. **Schedule 1 [2]** amends the section to provide that a tenant of social housing premises is taken to be in breach of the relevant residential tenancy agreement if the tenant, or any person occupying the premises with the tenant's consent, wilfully or negligently causes or permits damage to adjoining or adjacent property or uses any such property for the manufacture or sale of prohibited drugs.

Rental subsidies

Schedule 1 [3] amends section 44 of the Act to make it clear that, for the purposes of Division 2 of Part 4 of the Act (which applies to rent and rent increases), the cancellation or reduction of a rent rebate is not a rent increase, nor is it a reduction or withdrawal of any aspect of ancillary provision made by the landlord in connection with a tenancy. It is made clear, as a consequence, that the Tribunal has no jurisdiction to adjudicate disputes that are essentially just disputes about rental subsidies.

Termination of residential tenancies for breach of agreement

Under section 64 of the Act a landlord may apply to the Tribunal to terminate a residential tenancy on the ground that the tenant is in breach of the residential tenancy agreement. **Schedule 1 [4]** amends the section to provide that, where the application is made by a social housing provider, the Tribunal is obliged to consider, along with other matters it considers in such cases (such as the circumstances and welfare of the tenant), certain other aspects of the matter, such as the obligations of the landlord to its other tenants, the interests of other persons eligible for social housing, any adverse impact on neighbouring residents, the conduct of the tenant and the history of the tenancy.

In cases where the breach of the residential tenancy agreement is found to be one that subjects persons or property to unreasonable risk, or that involved the use of the residential property or adjoining or adjacent property for the manufacture or sale of prohibited drugs, the tenancy termination will usually be accompanied by an order in favour of the landlord that will require immediate surrender of the premises by the tenant.

Damage or injury caused by occupiers other than the tenant

Section 68 of the Act allows the Tribunal to terminate a residential tenancy if the tenant causes, or is likely to cause, damage to the premises or injury to the landlord, the landlord's agent or neighbouring occupiers. **Schedule 1 [5]** amends the section so that it provides that a tenancy of social housing premises may, in addition, be terminated by the Tribunal if the damage or injury was caused or apprehended in respect of adjoining or adjacent property.

Orders for possession

Under section 73 of the Act the Tribunal may, on application by a person in whose favour an order for possession of premises was made, issue a warrant for enforcement of the order. The Tribunal may refuse to issue the warrant if in its opinion the application is unduly late. **Schedule 1 [6]** amends the section to provide that, in the case of a tenancy of social housing premises, the application is not to be considered unduly late if the delay is due to bona fide efforts by the landlord to reach agreement with the tenant so that the tenancy might continue.