

Passed by both Houses



New South Wales

# Residential Tenancies Amendment (Social Housing) Bill 2005

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*I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney, , 2005*



New South Wales

## **Residential Tenancies Amendment (Social Housing) Bill 2005**

Act No , 2005

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

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*I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.*

*Chairman of Committees of the Legislative Assembly.*

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Residential Tenancies Amendment (Social Housing) Act 2005*.

**2 Commencement**

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) Schedule 2.4 commences on the date of assent to this Act.

**3 Amendment of Residential Tenancies Act 1987 No 26**

The *Residential Tenancies Act 1987* is amended as set out in Schedule 1.

**4 Amendment of other Acts**

The Acts specified in Schedule 2 are amended as set out in that Schedule.

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## Schedule 1      **Amendment of Residential Tenancies Act 1987**

(Section 3)

**[1] Section 3 Definitions**

Insert in alphabetical order in section 3 (1):

*social housing tenancy agreement* means a residential tenancy agreement in respect of social housing premises, but does not include any such agreement that is of a class prescribed by the regulations as not being within this definition.

**[2] Section 9A**

Insert after section 9:

**9A Extension of terms in standard form to existing social housing tenancy agreements**

A prescribed standard form of residential tenancy agreement may contain terms expressed to extend to social housing tenancy agreements (or a class of social housing tenancy agreements) entered into before the regulations prescribing those terms took effect.

**[3] Section 14A**

Insert after section 14:

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

- (1) A landlord under a social housing tenancy agreement, the fixed term of which has ended, may, by notice in writing given to the tenant, 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) This section has effect despite any other provision of this Act.

**[4] Section 19 Landlord to pay council and water rates, land tax etc**

Insert at the end of section 19:

- (2) This section is subject to section 19A.

**[5] Sections 19A and 19B**

Insert after section 19:

**19A Social housing tenants to pay water charges**

- (1) It is a term of every social housing tenancy agreement that the tenant must pay to the landlord any charges, determined in accordance with guidelines approved by the Minister, in respect of water usage by the tenant.
- (2) Without limiting subsection (1), the guidelines may:
  - (a) provide for the determination of water usage charges by reference to any of the following:
    - (i) actual usage or estimated usage,
    - (ii) the income of the tenant,
    - (iii) the rent payable for the premises to which the agreement relates (whether with or without rent rebate), and
  - (b) require water usage charges to be paid by the tenant in advance of actual usage.
- (3) The guidelines are to be made publicly available.
- (4) A copy of the guidelines is to be provided, on request, to any tenant under a social housing tenancy agreement free of charge and to other persons either free of charge or on payment of reasonable copying charges.
- (5) The guidelines may be amended or replaced from time to time.
- (6) The Energy and Water Ombudsman of NSW is to review any guidelines in force under this section as soon as possible after the period of 2 years from the date on which this section commences.

**19B Payment of debts by social housing tenants**

It is a term of a social housing tenancy agreement that a tenant under the agreement who incurs or has incurred a debt to the landlord in connection with that agreement or a prior social housing tenancy agreement:

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- (a) is to enter into arrangements with the landlord, in accordance with any reasonable request of the landlord, for the payment of that debt, and
  - (b) is to comply with those arrangements (including such arrangements entered into during the term of a prior social housing tenancy agreement) and with any variations to those arrangements that may be agreed to by the landlord and tenant.

**[6] Section 44 Application of Division**

Insert at the end of section 44 (2):

**Note.** However, a social housing tenant may apply to the Tribunal for an order that rent is excessive under section 47A if the rent rebate of the tenant is cancelled.

**[7] Section 47A**

Insert after section 47:

**47A Social housing tenant may apply for an order that rent is excessive**

- (1) A tenant under a social housing tenancy agreement whose rent rebate is cancelled may apply to the Tribunal for an order declaring that the rent payable under the agreement (or a proposed social housing tenancy agreement for premises already occupied by the tenant) is excessive.
- (2) The tenant may do so not later than 30 days after the cancellation of the rent rebate takes effect.

**[8] Section 49 Orders as to excessive rent increases or rents**

Omit “or 47” from section 49 (1). Insert instead “, 47 or 47A”.

**[9] Section 49 (2)**

Insert “, on application by a tenant under section 46,” after “determines”.

**[10] Section 49 (3)**

Insert “, on application by a tenant under section 47,” after “determines”.

**[11] Section 49 (3A)**

Insert after section 49 (3):

- (3A) If the Tribunal determines, on application by a tenant under section 47A, that a rent is excessive following the cancellation of the rent rebate of the tenant, the Tribunal may order that from a day specified by the Tribunal, not being earlier than the date of

that cancellation, the rent is not to exceed an amount specified by the Tribunal and may make such other orders as it thinks fit.

**[12] Part 5, Division 2A**

Insert after Division 2:

**Division 2A Special provisions relating to social housing tenancy agreements**

**63A Operation of Division**

This Division does not limit the operation of the other provisions of this Part in relation to social housing tenancy agreements.

**63B Notice of termination may be given on ground that tenant not eligible for social housing**

A landlord under a social housing tenancy agreement may give notice of termination of the agreement to the tenant on the ground that the landlord has determined, as the result of an assessment carried out under section 63C, that the tenant is not eligible to reside in the class of social housing premises to which the agreement applies.

**63C Eligibility assessments of social housing tenants**

- (1) In carrying out an assessment of the eligibility of a tenant under a social housing tenancy agreement to reside in the class of social housing premises concerned, the landlord is to apply the criteria approved by the Minister for the purposes of this section.
- (2) Any such criteria may differ from the criteria used to assess a person's eligibility to commence residing in that class of social housing premises.
- (3) The criteria used for the purposes of an assessment under this section must not relate to any of the following:
  - (a) whether or not the tenant has complied with any term of the agreement,
  - (b) whether or not the tenant has entered into, or complied with any term of, an acceptable behaviour agreement.
- (4) The landlord may request the tenant to provide any information that is reasonably required to enable the landlord to determine whether the tenant meets the criteria for the purposes of an assessment under this section.

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- (5) If the tenant refuses to provide any such information to the landlord, the landlord may determine, without further inquiry, that the tenant is not eligible to reside in the class of social housing premises concerned.
  - (6) In the case of a tenancy agreement that creates a tenancy for a fixed term, an assessment under this section may not be carried out prior to 6 months before the end of the term.
  - (7) The criteria referred to in this section are to be made publicly available.
  - (8) A copy of the criteria is to be provided, on request, to any tenant under a social housing tenancy agreement free of charge and to other persons either free of charge or on payment of reasonable copying charges.

**63D Review of decision to give notice on ground that tenant not eligible for social housing**

**(1) Notice to be given before notice of termination**

Before giving notice of termination of a social housing tenancy agreement to the tenant on the ground referred to in section 63B, the landlord is to advise the tenant of the decision to do so by notice in writing.

**(2) Right to review**

A notice given under this section must:

- (a) contain particulars of the reasons why the tenant is no longer considered eligible to reside in the premises, and
- (b) state that the tenant may apply to the landlord for a review of the decision within 30 days after the notice is given and give particulars of how such an application may be made, and
- (c) state that the tenant is entitled to make representations to the landlord in writing, or (if the tenant wishes) orally, as to why the agreement should not be terminated.

**(3) The tenant may, in accordance with the notice:**

- (a) apply to the landlord for a review of the decision, and
- (b) make representations in writing, or (if the tenant wishes) orally, to the landlord as to why the agreement should not be terminated.

(4) If the tenant applies to the landlord for a review under this section, the landlord is to review the decision, in accordance with any procedures approved by the Minister for the purposes of this section, and consider any representations made by the tenant.

(5) **Decision of landlord following review**

After the review is carried out, the landlord may:

- (a) give notice of termination of the agreement on the ground referred to in section 63B, or
- (b) advise the tenant, by notice in writing, that the landlord has decided not to give notice of termination of the agreement.

(6) **Procedural fairness taken to have been observed**

If the landlord complies with this section, the landlord is taken to have complied with any rules of procedural fairness required to be observed by the landlord before giving notice of termination to the tenant on the ground referred to in section 63B.

**63E Time periods to be observed in giving notice of termination on ground that tenant not eligible for social housing**

(1) A notice of termination of a social housing tenancy agreement is not to be given to the tenant on the ground referred to in section 63B before the later of the following:

- (a) the end of the 30-day period within which the tenant may apply for a review under section 63D of the decision to give the notice of termination,
- (b) the end of any such review carried out in respect of that decision.

(2) The notice of termination is not to specify as the day on which vacant possession of the premises is to be delivered up to the landlord a day that is earlier than:

- (a) in the case of a tenancy agreement that creates a tenancy for a fixed term—60 days after the day on which the notice is given or the day the term of the agreement ends, whichever is the later, or
- (b) in any other case—60 days after the day on which the notice of termination is given.

**63F Notice of termination may be given on ground that tenant offered alternative social housing premises**

A landlord under a social housing tenancy agreement may give notice of termination of the agreement (the *existing agreement*) to the tenant on the ground that the landlord has offered to enter

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into a new social housing tenancy agreement with the tenant in respect of alternative premises to the premises the subject of the existing agreement.

**63G Review of decision to give notice on ground that tenant offered alternative social housing premises**

**(1) Notice to be given before notice of termination**

Before giving notice of termination of an existing agreement to the tenant on the ground referred to in section 63F, the landlord is to advise the tenant of the decision to do so by notice in writing.

**(2)** The landlord may make the offer to enter into a new social housing tenancy agreement and give notice of the decision at the same time.

**(3) Right to review**

A notice given under this section must:

- (a) contain particulars of the reasons why the landlord wishes the tenant to move to alternative premises, and
- (b) state that the tenant may apply to the landlord for a review of the decision within 14 days after the notice is given and give particulars of how such an application may be made, and
- (c) state that the tenant is entitled to make representations to the landlord in writing, or (if the tenant wishes) orally, as to why the existing agreement should not be terminated.

**(4)** The tenant may, in accordance with the notice:

- (a) apply to the landlord for a review of the decision, and
- (b) make representations in writing, or (if the tenant wishes) orally, to the landlord as to why the existing agreement should not be terminated.

**(5)** If the tenant applies to the landlord for a review under this section, the landlord is to review the decision, in accordance with any procedures approved by the Minister for the purposes of this section, and consider any representations made by the tenant.

**(6) Decision of landlord following review**

After the review is carried out, the landlord may:

- (a) give notice of termination of the existing agreement on the ground referred to in section 63F, or

- (b) advise the tenant, by notice in writing, that the landlord has decided not to give notice of termination of the existing agreement, or
- (c) make a new offer to the tenant to enter into a new social housing tenancy agreement in respect of alternative premises that differ from those the subject of the offer in respect of which the review was carried out.

**(7) Right to second review if new offer made**

If a new offer is made under subsection (6) (c), subsections (1)–(6) apply in relation to giving notice of termination in connection with the new offer. Accordingly, the landlord is required to give a second notice, and the tenant is entitled to a second review, under this section. However, the landlord is not required to give any further notice, and the tenant is not entitled to any further review, under this section in relation to giving notice of termination following a second review.

**(8) Procedural fairness taken to have been observed**

If the landlord complies with this section, the landlord is taken to have complied with any rules of procedural fairness required to be observed by the landlord before giving notice of termination to the tenant on the ground referred to in section 63F.

**63H Time periods to be observed in giving notice of termination on ground that tenant offered alternative social housing premises**

- (1) A notice of termination of a social housing tenancy agreement is not to be given to the tenant on the ground referred to in section 63F before the later of the following:
  - (a) the end of the 14-day period within which the tenant may apply for any review under section 63G of the decision to give the notice of termination,
  - (b) the end of any such review carried out in respect of that decision.
- (2) However, if the landlord and tenant enter into a new social housing tenancy agreement before the end of that 14-day period or any such review, the notice of termination may be given on or after the day on which they enter into the new agreement.
- (3) The notice of termination is not to specify a day earlier than 30 days after the day on which the notice is given as the day on which vacant possession of the premises the subject of the existing agreement is to be delivered up to the landlord, unless it specifies an earlier day to which the tenant has consented.

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- (4) The notice of termination is ineffective unless the alternative premises in connection with which the notice of termination is given are available for occupation no later than 7 days before the date specified in the notice as the day on which vacant possession is to be delivered up to the landlord.
  - (5) In the case of a social housing tenancy agreement that creates a tenancy for a fixed term—the notice of termination is not ineffective merely because a day earlier than the day on which the term ends is specified as the day on which vacant possession is to be delivered up to the landlord.

**[13] New section 63I Notice of termination of public housing tenancy agreement—acceptable behaviour agreements**

Renumber existing section 57A as section 63I and transfer to Division 2A of Part 5 (as inserted by item [12]).

**[14] Section 64 Application to Tribunal by landlord for termination and order for possession**

Omit section 64 (2). Insert instead:

- (2) The Tribunal, on application by a landlord under this section, is to make an order terminating the agreement if it is satisfied:
  - (a) in the case of a notice given by a landlord on a ground referred to in section 56 or 61—that the landlord has established the ground, or
  - (b) in the case of a notice given by a landlord on the ground referred to in section 57, relating to a breach of the agreement:
    - (i) that the landlord has established the ground, and
    - (ii) that the breach, in the circumstances of the case, is such as to justify termination of the agreement, or
  - (c) in any other case (except in the case of a notice given by a landlord on a ground referred to in section 63B, 63F or 63I):
    - (i) that the tenant has seriously or persistently breached the agreement, or
    - (ii) that, having considered the circumstances of the case, it is appropriate to do so.

**[15] Section 64 (2A), (2B) and (2C)**

Insert after section 64 (2):

- (2A) The Tribunal, on application under this section by a landlord under a social housing tenancy agreement, is to make an order terminating the agreement (*the existing agreement*) if it is satisfied:
- (a) in the case of a notice given on a ground referred to in section 63B—that the landlord has determined, as the result of an assessment carried out under section 63C, that the tenant is not eligible to reside in the class of social housing premises to which the agreement applies, or
  - (b) in the case of a notice given on a ground referred to in section 63F:
    - (i) that the landlord has offered to enter into a new social housing tenancy agreement with the tenant in respect of alternative premises to the premises the subject of the existing agreement, and
    - (ii) that alternative premises (which may or may not be the same as the alternative premises in connection with which the notice was given) are available for occupation by the tenant.
- (2B) In deciding whether or not to make an order under subsection (2A) (a), the Tribunal is not to review the eligibility of the tenant to reside in the class of social housing premises to which the agreement applies.
- (2C) In deciding whether or not to make an order under subsection (2A) (b), the Tribunal is not to review the landlord’s reasons for making the offer concerned.

**[16] New section 64 (2D) (inserted as section 64 (2A) by Residential Tenancies Amendment (Public Housing) Act 2004)**

Re-number existing section 64 (2A) as section 64 (2D).

**[17] Section 64 (2D) (as re-numbered by item [16])**

Omit “57A” wherever occurring. Insert instead “63I”.

**[18] Section 64 (3A)**

Insert after section 64 (3):

- (3A) The Tribunal is not to make an order terminating a social housing tenancy agreement on the ground referred to in section 63B or 63F unless it is satisfied that:
- (a) except as provided by section 66, any notice required to be given under section 63D or 63G before giving notice of termination was given and that it was given in accordance with that section, and
  - (b) any review required to be carried out under section 63D or 63G was carried out and that it was carried out in accordance with that section.

**[19] Section 64 (4)**

Insert “(b) or (c)” after “subsection (2)”.

**[20] Section 64 (4)**

Insert “under that provision” after “premises”.

**[21] Section 64 (4) (b)**

Omit “the” where firstly occurring. Insert instead “any”.

**[22] Section 64 (6)**

Omit “the breach of the agreement”.

Insert instead “, in the case of a breach of the agreement, the breach”.

**[23] Section 66 Tribunal may waive defect in notices**

Insert “or any notice required to be given under section 63D or 63G” after “the agreement”.

**[24] Section 132 Exemptions**

Omit “, 41 and 45 (2)” from section 132 (1). Insert instead “and 41”.

**[25] Section 132 (4)**

Insert after section 132 (3):

- (4) Section 45 (4) does not apply to premises let under a social housing tenancy agreement.

**[26] Schedule 4 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*Residential Tenancies Amendment (Social Housing) Act 2005*

**[27] Schedule 4**

Insert at the end of the Schedule (with appropriate Part and clause numbers):

**Part Provisions consequent on the enactment  
of Residential Tenancies Amendment  
(Social Housing) Act 2005**

**Definition of “amending Act”**

In this Part:

*amending Act* means the *Residential Tenancies Amendment (Social Housing) Act 2005*.

**Declaration of further fixed term in relation to existing social housing tenancy agreements**

Section 14A, as inserted by the amending Act, extends to a social housing tenancy agreement entered into before the section commences.

**Existing social housing tenants to pay water charges**

Section 19A, as inserted by the amending Act, extends to a social housing tenancy agreement entered into before the section commences.

**Payment of debts by existing social housing tenants**

Section 19B, as inserted by the amending Act, extends to a social housing tenancy agreement entered into before the section commences.

**Application of special provisions relating to termination of social housing tenancy agreements**

- (1) Division 2A of Part 5, as inserted by the amending Act, extends to a social housing tenancy agreement entered into before the Division commences.
- (2) Despite subclause (1), notice of termination of a social housing tenancy agreement on a ground referred to in section 63B, as inserted by the amending Act, may not be given to a person who has been a tenant of social housing premises (including more than

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one such premises or class of premises) for a continuous period starting before 1 July 2005.

- (3) The amendments made to section 64 by the amending Act in relation to social housing tenancy agreements extend to any such agreements entered into before the amendments commence.

**Application of amendments relating to rent increases**

The amendments made to section 132 by the amending Act extend to an increase of rent payable under a social housing tenancy agreement entered into before the amendments commence.

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## Schedule 2 Amendment of other Acts

(Section 4)

### 2.1 Aboriginal Housing Act 1998 No 47

#### Section 3 Objects of Act

Insert after section 3 (d):

- (d1) to ensure that the available supply of housing under this Act is shared equitably among Aboriginal people and Torres Strait Islanders who are most in need,

### 2.2 Housing Act 2001 No 52

#### Section 5 Objects of Act

Insert after section 5 (1) (e):

- (f) to ensure that the public housing system focuses on housing people who are most in need,
- (f1) to ensure that the available supply of public housing is shared equitably among people who are most in need,

### 2.3 Real Property Act 1900 No 25

#### Section 53 Land under the provisions of this Act—how leased

Insert after section 53 (4):

- (5) Subsection (1) does not apply in relation to land the subject of a social housing tenancy agreement within the meaning of the *Residential Tenancies Act 1987*.

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**2.4 Residential Tenancies Amendment (Public Housing) Act  
2004 No 66**

**Schedule 1 Amendments**

Omit item [2] of Schedule 1.