



New South Wales

Residential Tenancies Amendment (Tenant Protections and Flood Response) Bill 2022

Explanatory note

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

Overview of Bill

This Bill amends the *Residential Tenancies Act 2010* (*the Act*) to provide protections for tenants, including tenants in areas impacted by the 2022 NSW floods.

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**

Schedule 1[1] restricts rent increases to once every 12 months for all residential tenancy agreements, rather than only for periodic agreements.

Schedule 1[2] restricts rent increases to the lesser of the public sector wage increase and the CPI number for Sydney.

Schedule 1[3] requires the landlord for a residential premises to ensure the premises is free of mould.

Schedule 1[4] requires the landlord for a residential premises to ensure the premises has adequate waterproofing as well as plumbing and drainage.

Schedule [5] inserts a definition of *member of the landlord's family*.

Schedule 1[6] and [7] remove the concept of no grounds terminations of residential tenancy agreements and specify certain grounds on which a landlord may give a termination notice in relation to fixed term tenancies and periodic agreements. Schedule 1[6] also makes it an offence for a landlord or other person who takes possession of residential premises following a termination to use, or permit the use of, the premises other than for a use that is in accordance with the grounds for termination.

Schedule 1[8] provides that the Tribunal must, rather than may, declare that a termination notice has no effect or refuse to make a termination order if satisfied that the termination notice, or the application made by the landlord for a termination notice, was a retaliatory notice or a retaliatory application.

Schedule 1[9] provides for the Tribunal to consider any reason the Tribunal considers relevant in satisfying itself that a landlord was wholly or partly motivated to give a retaliatory notice or application.

Schedule 1[10] provides that despite a finding by the Tribunal that a termination notice is a retaliatory notice, the Tribunal is not required to make an order declaring that the termination notice has no effect if the landlord establishes that a termination notice was not given in retaliation.

Schedule 1[11] prevents a landlord from giving a further termination notice for a fixed term or periodic agreement within 12 months after the Tribunal has made orders that a termination notice is a retaliatory notice and has no effect.

Schedule 1[12] inserts proposed Part 13 in response to the 2022 NSW floods. Proposed section 229 specifies the local government areas which comprise the *flood impacted area*, and provides that an *impacted lease* means a residential tenancy agreement for premises located in the flood impacted area. Proposed sections 230 and 231 provide the following protections for impacted leases during the period of 12 months that commences on the day on which the proposed Part commences (the *moratorium period*)—

- (a) an exemption from a provision of the Act that would result in the termination of an impacted tenant's residential tenancy during the moratorium period, except in certain circumstances,
- (b) an exemption from rental increases for impacted leases during the moratorium period,
- (c) certain other restrictions on increases in rent payable for premises located in the flood impacted area.



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New South Wales

Residential Tenancies Amendment (Tenant Protections and Flood Response) Bill 2022

No. _____, 2022

A Bill for

An Act to amend the *Residential Tenancies Act 2010* to provide protection for tenants, including in flood impacted areas.

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 (Tenant Protections and Flood Response) Act 2022*.

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2 Commencement

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

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Schedule 1	Amendment of Residential Tenancies Act 2010	1
	No 42	2
[1] Section 41 Rent increases		3
	Omit “periodic” from section 41(1B).	4
	Insert instead “residential tenancy”.	5
[2] Section 41(1C)		6
	Insert after section 41(1B)—	7
	(1C) The rent payable under a residential tenancy agreement may not be increased by more than the lesser of—	8
	(a) the public sector wage increase, being the amount prescribed in the <i>Industrial Relations (Public Sector Conditions of Employment) Regulation 2014</i> , clause 6(1)(a), and	9
	(b) the Consumer Price Index (All Groups Index) for Sydney issued by the Australian Statistician.	10
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[3] Section 52 Landlord’s general obligations for residential premises		15
	Insert after section 52(1A)(c)—	16
	(ca) are free of mould, and	17
[4] Section 52		18
	Insert “, waterproofing” after “plumbing” in section 52(1A)(e).	19
[5] Section 80 Definitions		20
	Insert in appropriate order—	21
	<i>member of the landlord’s family</i> means—	22
	(a) the landlord’s spouse or de facto partner, or	23
	(b) a child of the landlord or the landlord’s spouse or de facto partner, or	24
	(c) a parent or step-parent of the landlord or the landlord’s spouse or de facto partner, or	25
	(d) another person who ordinarily resides with the landlord and is substantially dependent on the landlord.	26
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[6] Section 82 Termination notices		29
	Omit “84, 85,” from section 82(1)(c).	30
[7] Sections 84–85A		31
	Omit sections 84 and 85. Insert instead—	32
84 End of residential tenancy at end of fixed term tenancy		33
	(1) A landlord may, at any time before the end of the fixed term of a fixed term agreement, give a termination notice for the agreement that is to take effect on or after the end of the fixed term on 1 of the following grounds—	34
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	(a) the landlord requires the residential premises for the landlord’s own use, or the use of a member of the landlord’s family, for a period not less than 12 months,	37
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- (b) the landlord wishes to carry out renovations or repairs to the residential premises that will render the premises uninhabitable for a period not less than 4 weeks, 1
 - (c) the residential premises will be used in a way, or kept in a state, that means it cannot be used as a residence for a period not less than 6 months. 2
 - (2) The termination notice must specify a termination date that is— 3
 - (a) on or after the end of the fixed term, and 4
 - (b) at least 90 days after the day on which the notice is given. 5
 - (3) The Tribunal must, on application by a landlord, make a termination order if satisfied that— 6
 - (a) a termination notice was given in accordance with this section, and 7
 - (b) the landlord has established the ground on which the notice was given, and 8
 - (c) the termination is appropriate in the circumstances, and 9
 - (d) the tenant has not vacated the premises as required by the notice. 10
 - (4) This section does not apply to a residential tenancy agreement if the tenant has been in continual possession of the same residential premises for a period of 20 years or more and the fixed term of the original fixed term agreement has ended. 11
- 85 Termination of periodic agreement** 12
- (1) A landlord may, at any time, give a termination notice for a periodic agreement on 1 of the following grounds— 13
- (a) the landlord requires the residential premises for the landlord's own use, or the use of a member of the landlord's family, for a period not less than 12 months, 14
 - (b) the landlord wishes to carry out renovations or repairs to the residential premises that will render the premises uninhabitable for a period not less than 4 weeks, 15
 - (c) the residential premises will be used in a way, or subject to circumstances, that will render the premises unable to be used as a residence for a period not less than 6 months. 16
- (2) The termination notice must specify a termination date that is at least 90 days after the day on which the notice is given. 17
- (3) The Tribunal must, on application by a landlord, make a termination order if satisfied that— 18
- (a) a termination notice was given in accordance with this section, and 19
 - (b) the landlord has established the ground on which the notice was given, and 20
 - (c) the termination is appropriate in the circumstances, and 21
 - (d) the tenant has not vacated the premises as required by the notice. 22
- (4) This section does not apply to a residential tenancy agreement if the tenant has been in continual possession of the same residential premises for a period of 20 years or more. 23

85A	Wrongful termination of fixed term and periodic agreements	1
(1)	This section applies if a residential tenancy agreement for residential premises is terminated under sections 84 or 85.	2 3
(2)	A landlord or other person who obtains possession of the residential premises following the termination must not use, or permit the use of, the premises other than for a use that is in accordance with the grounds for termination. Maximum penalty—100 penalty units.	4 5 6 7
(3)	The Tribunal may, on application by the tenant under the residential tenancy agreement, if satisfied that the landlord has contravened subsection (2), make an order—	8 9 10
(a)	directing the landlord to cause the premises to cease to be used other than in accordance with the grounds for termination, and	11 12
(b)	if the Tribunal considers it appropriate in the circumstances to do so— deeming the premises to be subject to a residential tenancy agreement between the landlord and the tenant for a term, and on the terms, specified by the Tribunal.	13 14 15 16
(4)	Without limiting section 187(1)(d), the Tribunal may, on application by the tenant under the residential tenancy agreement, if satisfied that the landlord has contravened subsection (2), make an order that the landlord pay compensation to the tenant for wrongful termination of the residential tenancy agreement.	17 18 19 20 21
(5)	A tenant may make an application to the Tribunal under this section within the period prescribed by the regulations.	22 23
[8]	Section 115 Retaliatory evictions	24
	Omit “may” from section 115(1) and (2) wherever occurring. Insert instead “must”.	25
[9]	Section 115(2)(d)	26
	Insert at the end of section 115(2)—	27
	(d) another reason the Tribunal considers relevant.	28
[10]	Section 115(2A)	29
	Insert after section 115(2)—	30
	(2A) Despite making a finding under subsection (2), the Tribunal is not required to make an order under subsection (1) if the landlord establishes to the satisfaction of the Tribunal that the termination notice was not given in retaliation.	31 32 33 34
[11]	Section 115A Limitation on no grounds termination	35
	Insert after section 115—	36
115A	Limitation on no grounds termination	37
(1)	A landlord must not give a termination notice to a tenant under section 84 or 85 within 12 months after the Tribunal has made an order under section 115 in relation to a termination notice given by the landlord to the tenant. Maximum penalty—20 penalty units.	38 39 40 41
(2)	A termination notice that contravenes this section has no effect.	42

[12] Part 13 Response to 2022 NSW floods	1
Insert after Part 12—	2
Part 13 Response to 2022 NSW floods	3
229 Definitions	4
In this Part—	5
<i>impacted lease</i> means a residential tenancy agreement for premises located in the flood impacted area.	6 7
<i>flood impacted area</i> means—	8
(a) the local government areas of Armidale Regional, Ballina, Bayside, Bega Valley, Bellingen, City of Blacktown, City of Blue Mountains, Byron, Camden, City of Campbelltown, Canterbury-Bankstown, Central Coast, Clarence Valley, City of Coffs Harbour, Eurobodalla, City of Fairfield, Georges River, Glen Innes Severn Shire, City of Hawkesbury, Hornsby, Kempsey, Inner West, Kiama, Ku-ring-gai, Kyogle, City of Lismore, City of Liverpool, Mid-Coast, Nambucca Valley, City of Newcastle, Northern Beaches, City of Parramatta, City of Penrith, Port Macquarie-Hastings, Richmond Valley, City of Ryde, City of Shellharbour, City of Shoalhaven, Sutherland Shire, Tenterfield, The Hills Shire, Tweed, Wingecarribee, Wollondilly and City of Wollongong,	9 10 11 12 13 14 15 16 17 18 19 20
(b) any other local government area prescribed by the regulations.	21
<i>moratorium period</i> means the period—	22
(a) commencing on the day on which this Part commences, and	23
(b) ending at the beginning of the day that is 12 months after the day on which this Part commences.	24 25
230 Termination of residential tenancy agreements	26
(1) Despite any other provision of this Act, an impacted lease must not be terminated by a landlord during the moratorium period.	27 28
(2) This section does not apply if the Tribunal considers that—	29
(a) the premises under an impacted lease—	30
(i) otherwise than as a result of a breach of an agreement—have been destroyed or are wholly or partly uninhabitable, or	31 32
(ii) have ceased to be lawfully usable as a residence, or	33
(b) the behaviour of a tenant under an impacted lease is unreasonable in the circumstances.	34 35
231 Rent increases	36
(1) The rent payable under an impacted lease must not be increased under section 41 during the moratorium period.	37 38
(2) A landlord must not enter a residential tenancy agreement for premises in the flood impacted area if the rent payable under the agreement is higher than—	39 40
(a) if the premises were under a residential tenancy agreement on 25 February 2022—the rent payable for the premises at that time, or	41 42
(b) otherwise, the median rent for the same type of premises.	43
(3) In this section—	44

type of premises means the type of premises and number of bedrooms in the relevant local government area as set out in the document titled Rent Tables December 2021 Quarter published on the website of the Department of Communities and Justice.

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232 Repeal of Part

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This Part is repealed at the beginning of the day that is 12 months after the day on which this Part commences.

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