Housing Amendment (Tenant Fraud) Act 2008 No 7

[2008-7]

New South Wales

Status Information

Currency of version

Repealed version for 14 April 2008 to 14 April 2008 (accessed 30 June 2024 at 22:55)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Repeal**
  The Act was repealed by sec 4 (1) of this Act with effect from 15.4.2008.

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the Interpretation Act 1987.

File last modified 15 April 2008

Housing Amendment (Tenant Fraud) Act 2008 No 7

New South Wales

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Housing Amendment (Tenant Fraud) Act 2008 No 7

New South Wales

An Act to amend the *Housing Act 2001* with respect to tenant fraud; and for other purposes.

1 Name of Act

This Act is the *Housing Amendment (Tenant Fraud) Act 2008*.

2 Commencement

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

3 Amendment of Housing Act 2001 No 52

The *Housing Act 2001* is amended as set out in Schedule 1.

4 Repeal of Act

(1) This Act is repealed on the day following the day on which this Act commences.

(2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendments

(Section 3)

[1] Section 69 False statements and representations

Omit "20 penalty units" wherever occurring in section 69 (1) and (2).

Insert instead "3 months imprisonment or 20 penalty units, or both".

[2] Sections 69A and 69B

Insert after section 69:

69A   Failure to notify of change of circumstances

(1) A person must not, with the intention of retaining or continuing to obtain a benefit to which the person knows that he or she is not entitled, fail to notify the Corporation of any relevant change of circumstances within the time specified in subsection (2).

Maximum penalty: 3 months imprisonment or 20 penalty units, or both.

(2) The Corporation must be notified under subsection (1) within 28 days after the person first becomes aware of the relevant change of circumstances.

(3) In this section:

benefit means any accommodation, rental rebate or any other advantage or concession from the Corporation.

relevant change of circumstances means a change in the person's circumstances that will remove or reduce the person's entitlement to a benefit.

69B   Access to information for preventing, investigating or prosecuting fraud

(1) For the purposes of preventing or investigating fraud against the Corporation, or prosecuting a person for any such fraud, the Corporation may request, collect, use and disclose information from any one or more of the following registers:

(a) a driver licence register within the meaning of the *Road Transport (Driver Licensing) Act 1998*,

(b) the Register within the meaning of the *Road Transport (Vehicle Registration) Act 1997*,

(c) the Register within the meaning of the *Business Names Act 2002*,

(d) the Register maintained under section 31B of the *Real Property Act 1900*,

(e) the Register of Interests in Goods maintained under section 4 of the *Registration of Interests in Goods Act 1986*,

(f) any register maintained under the *Maritime Services Act 1935* or the *Marine Safety Act 1998* with respect to registrable vessels.

(2) A person or body who maintains a register referred to in subsection (1) is, on receipt of a written request from the Corporation, to disclose to the Corporation any information held on the register that relates to the person or property in respect of which the request is made.

(3) The Corporation may, in relation to a request under this section for information about a person or property, disclose information about that person or property to

the person or body to whom the request is being made.

(4) In this section, *information* includes personal information within the meaning of the *Privacy and Personal Information Protection Act 1998*.

[3] Sections 72A and 72B

Insert after section 72:

72A Persons living with tenants liable to repay certain amounts

A person is jointly and severally liable with another person (*the tenant*) to pay to the Corporation any amount that the tenant is liable to pay to the Corporation if:

(a) the person lives or has lived with the tenant, and

(b) the tenant is liable to pay the amount to the Corporation because the tenant improperly obtained a rental rebate or any other advantage or concession to which the tenant was not entitled because of the person living with the tenant, and

(c) the person was over 18 years of age at the time the tenant became liable to pay the amount and knew, or should reasonably have suspected, that the tenant was improperly obtaining the rental rebate or the other advantage or concession.

72B Registration of debt as charge on land

(1) The Corporation may, after obtaining an order of a court in proceedings against a person for the recovery of money, apply to the Registrar-General for registration of the order in relation to any land owned by the person (including any land owned jointly with another person).

(2) An application may not be made under this section unless:

(a) the amount payable to the Corporation under the order (or the total amount payable under the orders) to which the application relates exceeds $1,000 or such other amount as is prescribed by the regulations, and

(b) the amount, or part of the amount, is payable because the person improperly obtained a rental rebate or any other advantage or concession from the Corporation.

(3) An application under this section must define the land to which it relates.

(4) The Registrar-General must, on application under this section and lodgment of the court order, register the order in relation to the land in such manner as the Registrar-General thinks fit.

(5) There is created by force of this section, on the registration of the order, a charge on the land in relation to which the order is registered to secure the payment to the Corporation of the amount payable under the order.

(6) Such a charge ceases to have effect in relation to the land:

(a) if the Corporation certifies in writing that the amount payable under the order has been paid to the Corporation or that the Corporation has otherwise agreed to the cancellation of the charge—on registration of the cancellation of the charge by the Registrar-General, or

(b) on the sale or other disposition of the property with the consent of the Corporation, or

(c) on the sale of the land to a purchaser in good faith for value who, at the time of the sale, has no notice of the charge,

whichever first occurs.

(7) Such a charge is subject to every charge or encumbrance to which the land was subject immediately before the order was registered and, in the case of land under the provisions of the *Real Property Act 1900*, is subject to every prior mortgage, lease or other interest recorded in the Register kept under that Act.

(8) Such a charge is not affected by any change of ownership of the land, except as provided by subsection (6).

(9) If:

(a) such a charge is created on land of a particular kind and the provisions of any law of the State provide for the registration of title to, or charges over, land of that kind, and

(b) the charge is so registered,

a person who purchases or otherwise acquires the land after the registration of the charge is, for the purposes of subsection (6), taken to have notice of the charge.

(10) If such a charge relates to land under the provisions of the *Real Property Act 1900*, the charge has no effect until it is registered under that Act.

(11) In this section, a reference to an order of a court includes a reference to a judgment of a court.

[4] Section 73 Recovery of amounts due to Corporation

Insert at the end of the section:

(2) The Corporation may recover an amount awarded to it by a court in proceedings against a person for the recovery of money by reducing or cancelling, in accordance with Part 7, any rental rebate to which the person may otherwise be entitled.

[5] Section 74 Proceedings for offences

Insert at the end of the section:

(2) A prosecution or proceeding in respect of an offence under this Act may only be instituted by or on behalf of the Corporation.

[6] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

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[7] Schedule 3

Insert at the end of the Schedule with appropriate Part and clause numbering:

Part Provisions consequent on enactment of Housing Amendment (Tenant Fraud) Act 2008

Failure to notify of change of circumstances

(1) Section 69A extends to a change in a person's circumstances that occurred before the commencement of that section but only if the change continues to affect the person's entitlement to accommodation or a rental rebate or any other advantage or concession from the Corporation after the commencement of that section.

(2) A change of circumstances referred to in subclause (1) must be notified to the Corporation within 28 days after the commencement of section 69A.

Persons living with tenants liable to repay certain amounts

Section 72A extends to an amount that a tenant (within the meaning of that section) was required to pay to the Corporation before the commencement of that section.

Registration of debt as charge on land

Section 72B extends to an order that was obtained by the Corporation before the commencement of that section.

Part Tenant fraud amnesty

Temporary amnesty

(1) The objective of this clause is to provide an amnesty:

    (a) to encourage a person to notify the Corporation if the person is incorrectly or improperly obtaining a benefit from the Corporation, and

    (b) to encourage a person to notify the Corporation of any change in the person's circumstances that removes or reduces the person's entitlement to a benefit from the Corporation, and

    (c) to protect any such person from prosecution or civil proceedings in respect of the matters notified before the end of the amnesty period.

(2) In this clause:

benefit includes an entitlement to accommodation or a rental rebate or any other advantage or concession.

end of the amnesty period means 1 October 2008 or such other day as may be prescribed by the regulations.

fraud offence means an offence relating to improperly obtaining a benefit from the Corporation, other than an offence that involves violence or a threat against a person.

Note—

Examples of fraud offences include an offence under section 69 or 69A of this Act, or an offence under section 178BA or 178BB of the *Crimes Act 1900*.

(3) A person cannot be prosecuted for a fraud offence in respect of any conduct that would constitute such an offence if the person notifies the Corporation of the person's conduct:

    (a) before the end of the amnesty period, and

    (b) before the Corporation has commenced an investigation into the conduct.

(4) If a person notifies the Corporation in accordance with subclause (3), no action or proceeding may be brought by the Corporation to recover any penalty, damages or other monies from the person in respect of:

    (a) the conduct constituting the fraud offence that occurred before the notification, or

    (b) the benefit that the person incorrectly or improperly obtained, as a result of that conduct, from the Corporation before the notification.

(5) The onus of proving that a notification took place for the purposes of this clause is on the person who made the notification.

(6) This clause does not apply to any prosecution or to any action or proceeding commenced before the commencement of this clause.

(7) Nothing in this clause prevents the Corporation from varying, cancelling or refusing to grant any benefit under this Act as a result of any notification given under this clause.