

RESIDENTIAL TENANCIES (AMENDMENT) BILL 1988

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Residential Tenancies Act 1987 with respect to—

- (a) the rights and obligations of landlords and tenants under residential tenancy agreements;
- (b) the appointment of a Tenancy Commissioner, investigators and other officers;
- (c) the suspension and enforcement of orders of possession; and
- (a) other miscellaneous matters.

The Bill also amends the Landlord and Tenant (Amendment) Act 1987 to omit certain uncommenced amendments.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to commence on a day or days to be appointed by proclamation (except clause 4 which is to commence on the date of assent to the proposed Act).

Clause 3 is a formal provision that gives effect to the Schedule of amendments.

Clause 4 amends the Landlord and Tenant (Amendment) Act 1987 by omitting uncommenced amendments to the Landlord and Tenant (Amendment) Act 1948 which transfer functions of the Fair Rents Board and the Rent Controller to the Residential Tenancies Tribunal and functions of a clerk of the Fair Rents Board to the Registrar of the Tribunal.

SCHEDULE 1—AMENDMENTS

Residential tenancy agreements—costs of preparation and alleged breaches

Schedule 1 (2) amends section 12 of the Act so as to make the costs of preparation of a residential tenancy agreement payable by the tenant, but only to the maximum amount (if any) prescribed by the regulations (at present, the costs are to be borne by the landlord and tenant in equal shares).

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Schedule 1 (3) amends section 16 of the Act so as to remove the right of a landlord or a tenant to apply to the Residential Tenancies Tribunal in the event of a dispute arising under the residential tenancy agreement. The section as amended will allow applications to be made only where there is an alleged breach of an agreement.

Rights and obligations of landlords and tenants

Schedule 1 (4) amends section 17 of the Act so that under a residential tenancy agreement a landlord is required to provide one copy only of a residential tenancy agreement to the tenants, rather than a copy to each tenant as at present.

Schedule 1 (5) amends section 24 of the Act which makes it a term of every residential tenancy agreement that the landlord, the landlord's agent or a person authorised in writing by the landlord may enter residential premises in the circumstances set out in the section. The effect of the amendments is to vary the term so that—

- a person authorised by the landlord may enter residential premises to carry out repairs without the necessity for the written consent of the landlord; and
- although 7 days' notice of an inspection (or 2 days' notice of an inspection for the purposes of repairs) is required, that notice is not required to be in writing as at present.

Schedule 1 (5) also inserts a new subsection (4A) into section 24 so as to enable the Residential Tenancies Tribunal to make an order authorising entry to residential premises for the purpose of determining whether the tenant, in breach of the term of the residential tenancy agreement set out in section 23, has used the premises for an illegal purpose, caused a nuisance or interfered with the peace, comfort or privacy of any neighbour.

Schedule 1 (6) amends section 27 of the Act which makes it a term of every residential agreement that the tenant must not affix or remove any fixture except with the landlord's written consent. The effect of the amendment is to vary the term so as to remove the obligation on the landlord not to unreasonably refuse consent. Schedule 1 (4) (c) makes a consequential amendment.

Schedule 1 (7) amends section 28 of the Act so that, as a term of every residential tenancy agreement, a landlord must reimburse a tenant for the cost of urgent repairs only up to \$500, rather than up to \$800 as at present. Schedule 1 (7) further varies the term set out in section 28 so that it is subject to the tenant arranging (or attempting to arrange) for a tradesperson nominated by the landlord to carry out the urgent repairs involved.

Schedule 1 (8) amends section 32 of the Act so as to remove the obligation on the landlord to give the tenant notice of his or her residential address if the landlord has given the tenant notice of the business address of the landlord's agent.

Schedule 1 (9) amends section 33 of the Act which makes it a term of every residential tenancy agreement that the tenant may assign his or her rights under a residential tenancy agreement or sublet the residential premises with the landlord's prior consent. The effect of the amendment is to vary the term so as to remove the obligation on the landlord not to unreasonably refuse consent.

Rents

Schedule 1 (10) amends section 38 of the Act so as to prohibit a person from requiring more than 2 weeks' rent in advance if the proposed rent is \$250 or less, or more than 1 month's rent in advance if the proposed rent is more than \$250 (the present amount is \$300).

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Schedule 1 (11) amends section 48 of the Act so that the Residential Tenancies Tribunal may, when determining an application that a rent, or rent increase, is excessive, consider only work done to the premises by the tenant, and not also work intended to be done as at present.

Schedule 1 (12) amends section 49 of the Act so as to allow the Residential Tenancies Tribunal, in a case where it determines that a rent is excessive because of the removal or withdrawal of goods or services by the landlord, to make an order reducing the rent from the date of the removal or withdrawal. (Currently, an order may only be made effective from the date of the application.)

Termination of residential tenancy agreements

Schedule 1 (13) amends section 57 of the Act by substituting subsection (2) so as to enable the landlord to require premises to be vacated 7 days after notice of termination of the residential tenancy agreement is given (rather than 14 days as at present) where rent has not been paid. In any other case of termination of an agreement, the tenant may not be required to vacate the premises until 14 days after notice of termination has been given.

Schedule 1 (14) amends section 65 of the Act by inserting a new subsection (1A) which allows the Residential Tenancies Tribunal to make payment of an occupation fee a condition of suspension of an order for possession.

Schedule 1 (15) amends section 73 of the Act so as to enable the Registrar or a Deputy Registrar (as well as the Chairperson or any other Tribunal member) to issue a warrant authorising enforcement of an order for possession.

Tenancy Commissioner

Currently, the Act provides for the Commissioner for Consumer Affairs to exercise functions under the Act. These functions are to be transferred to the Tenancy Commissioner as a result of the transfer of the administration of the Act from the Minister for Consumer Affairs to the Minister for Housing.

Schedule 1 (20) inserts new sections 117A and 117B into the Act.

- New section 117A provides for the appointment of a Tenancy Commissioner under the Public Sector Management Act 1988.
- New section 117B provides for the appointment of staff to enable the Tenancy Commissioner to carry out his or her functions under the Act.

Schedule 1 (22) inserts new sections 119A–119E into the Act. The new sections are similar to provisions in the Residential Tenancies Tribunal Act 1986 (which will be repealed by the Act on its commencement) and provisions in the Fair Trading Act 1987. (The provisions of the Fair Trading Act confer powers on the Commissioner for Consumer Affairs and other officers which could have been exercised in relation to possible offences under the Act if its administration had not been transferred.)

- New section 119A provides for officers to be appointed as investigators and provided with certificates of identification by the Minister. An investigator must produce his or her certificate of identification on request to any person who is required to comply with a notice given by the investigator.
- New section 119B confers on an investigator the power to require a person, by notice in writing, to give information, produce documents or give evidence in relation to a possible offence against the Act and to enter premises to examine documents for the purpose of determining whether or not an offence against the Act has been committed.

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- New section 119C empowers the Tenancy Commissioner, a person authorised by the Commissioner or an investigator to inspect, to retain possession and to take copies of documents produced under section 119B.
- New section 119D exempts the Tenancy Commissioner, investigators and other officers from personal liability for actions done in good faith in the course of administering the Act.
- New section 119E requires the Tenancy Commissioner to prepare an annual report on the Commissioner's activities.

Schedule 1 (1) (a)–(d), (17), (19), (21) and (23) make amendments as a consequence of the amendments made by Schedule 1 (20) and (22).

Miscellaneous amendments

Schedule 1 (1) (e) amends section 3 of the Act to make it clear that the Act applies to residential tenancy agreements under which the tenant is a corporation if any natural person resides on the premises.

Schedule 1 (16) amends section 81 of the Act by way of statute law revision.

Schedule 1 (18) amends section 116 of the Act to allow an officer prescribed by the regulations to act as an informant in proceedings for contempt of the Residential Tenancies Tribunal.

Schedule 1 (24) inserts new section 120A into the Act which provides that if a person brings proceedings in any court, rather than in the Residential Tenancies Tribunal, and the court is of the opinion that the Tribunal has adequate powers to deal with the case, the court must order the person to pay the defendant's costs.

Schedule 1 (25) amends section 125 of the Act so as to make it an offence, for which there is a penalty of \$500, for a person to fail to comply with a notice of an investigator or to obstruct an investigator in carrying out functions under section 119B.

Schedule 1 (26) amends section 130 of the Act so as to enable documents (other than notices of termination) to be given to landlords, or documents and applications to be given or lodged with the Residential Tenancies Tribunal, by facsimile transmission.

Schedule 1 (27) repeals section 131 of the Act which provides for certain offences under the Act to be dealt with by the issue of penalty notices. Consequently, Schedule 1 (29) omits section 135 of the Act which amends the definition of "penalty notice" in the Justices Act 1902 to include a reference to section 131.

Schedule 1 (28) amends section 132 of the Act so that the New South Wales Land and Housing Corporation is exempt from the provisions of section 35 (recognition of certain persons as tenants) and section 45 (2) (60 days' notice of increase of rent), in addition to the provisions of sections 40 and 41. Under the amended section, the corporation will not be exempt from the provisions of section 27 (alterations, additions etc. to residential premises) and section 33 (right to assign rights or sub-let), as presently provided by the Act.
