



New South Wales

# Residential Tenancies Amendment (Occupancy Agreements) Bill 2011

## 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 2010* to specify some rights and duties of certain persons who enter into agreements under which a person is granted the right to occupy residential premises as a residence and who are presently outside the scope of the Act (and whose rights and obligations are generally governed by unregulated common law contracts) and to give those persons access to the Consumer, Trader and Tenancy Tribunal to resolve disputes. The occupants affected include the following:

- (a) those who live in boarding houses,
- (b) people with a disability who live in group homes or residential centres,
- (c) occupants of educational institutions and residential colleges,
- (d) occupants of hotels and motels, backpackers' hostels and serviced apartments,
- (e) those who live in refuges or crisis accommodation and other supported accommodation,
- (f) those who live in caravans in caravan parks and who are not protected by other legislation,

- (g) those who live in share houses who are not currently subject to the Act,
- (h) lodgers in private homes.

## 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 3 months after the date of assent to the proposed Act, unless commenced sooner by proclamation.

## **Schedule 1      Amendment of Residential Tenancies Act 2010 No 42**

**Schedule 1 [7]** provides that the Consumer, Trader and Tenancy Tribunal may, on application by the Director-General or another person, make an order declaring that a specified agreement is, or is not, an occupancy agreement to which the Act applies.

**Schedule 1 [8]** inserts a new Part into the *Residential Tenancies Act 2010* dealing with previously unprotected occupants. That Part contains the following provisions:

**Clause 186A** defines terms used in the proposed Part. A *grantor* is defined as the person who grants the right to occupy residential premises under an occupancy agreement. An *occupant* is defined as the person who has the right to occupy residential premises under an occupancy agreement.

**Clause 186B** specifies the agreements that are occupancy agreements. An *occupancy agreement* is an agreement under which a person grants to another person for value a right to occupy specified residential premises as a residence (whether or not with other people). However, an agreement that is a residential tenancy agreement to which the Act applies is not an occupancy agreement.

**Clause 186C** specifies when an occupancy agreement commences.

**Clause 186D** specifies the occupancy principles that apply in relation to an occupancy agreement for premises.

**Clause 186E** provides that the regulations may make provision in relation to occupancy agreements, including, for example, standard occupancy terms and that the regulations may provide for more than one form of standard occupancy agreement for use for different classes of residential premises, occupancy agreements and parties. The proposed section also requires that any regulation about standard occupancy terms must be consistent with the occupancy principles.

**Clause 186F** provides that an occupancy agreement must contain, and is taken to contain, terms to the effect of the occupancy principles and terms to the effect of the standard occupancy terms prescribed by the regulations and may contain other terms that are consistent with those standard occupancy terms and the occupancy principles.

**Clause 186G** provides that the grantor under an occupancy agreement must deposit the amount of any bond under the agreement with the Director-General. If the Director-General accepts the bond, Divisions 1–3 of Part 8 of the Act apply in relation to the occupancy agreement with the appropriate modifications.

**Schedule 1 [17]** provides that the Consumer, Trader and Tenancy Tribunal must give effect to the occupancy principles in considering a matter, or making a decision under the Act, in relation to a dispute between the parties to an occupancy agreement or a dispute under such an agreement.

**Schedule [1] and [2]** update the long title to include references to grantors, occupants and occupancy agreements.

**Schedule 1 [9] and [11]–[16]** extend certain provisions about landlords and tenants to include grantors and occupants.

**Schedule 1 [4], [10] and [18]** extend references to residential tenancy agreements to include occupancy agreements.

**Schedule 1 [3]** inserts definitions used in the new provisions.

**Schedule 1 [5] and [6]** limit the application of existing provisions about residential tenancy agreements.

**Schedule 1 [19]** provides for the making of applications to the Tribunal in relation to breaches of occupancy agreements or of the occupancy principles.

**Schedule 1 [20]** provides for the making of savings and transitional regulations consequent on the enactment of the proposed Act.





New South Wales

# Residential Tenancies Amendment (Occupancy Agreements) Bill 2011

## Contents

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	Page
1 Name of Act	2
2 Commencement	2
Schedule 1 Amendment of Residential Tenancies Act 2010 No 42	3





New South Wales

# Residential Tenancies Amendment (Occupancy Agreements) Bill 2011

No. , 2011

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## A Bill for

An Act to amend the *Residential Tenancies Act 2010* to extend certain rights and duties under that Act to occupants of residential premises who are not covered by that Act; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Residential Tenancies Amendment (Occupancy Agreements) Act 2011</i> .	3 4
<b>2 Commencement</b>	5
This Act commences 3 months after the date of assent to this Act (unless commenced sooner by proclamation).	6 7

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<b>Schedule 1</b>	<b>Amendment of Residential Tenancies Act 2010 No 42</b>	1
		2
<b>[1] Long title</b>		3
	Insert “and of other grantors and occupants” after “tenants”.	4
<b>[2] Long title</b>		5
	Insert “and occupancy agreements” after “agreements”.	6
<b>[3] Section 3 Definitions</b>		7
	Insert in alphabetical order in section 3 (1):	8
	<i>grantor</i> has the meaning given by section 186A.	9
	<i>occupancy agreement</i> has the meaning given by section 186B.	10
	<i>occupancy principles</i> has the meaning given by section 186D.	11
<b>[4] Section 3 (1), definition of “rent”</b>		12
	Insert “or occupancy agreement” after “residential tenancy agreement”.	13
<b>[5] Section 7 Premises to which Act does not apply</b>		14
	Insert “, except to the extent provided by Part 8A,” after “does not”.	15
<b>[6] Section 8 Agreements to which Act does not apply</b>		16
	Insert “, except to the extent provided by Part 8A,” after “does not” in section 8 (1).	17
		18
<b>[7] Section 11 Declaration by Tribunal</b>		19
	Insert “or occupancy agreement” after “residential tenancy agreement”.	20
<b>[8] Part 8A</b>		21
	Insert after Part 8:	22
		23
	<b>Part 8A Occupancy agreements</b>	23
		24
<b>186A Definitions</b>		24
	In this Part:	25
	<i>grantor</i> means the person who grants the right to occupy residential premises under an occupancy agreement, and includes a prospective grantor.	26
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*occupant* means the person who has the right to occupy residential premises under an occupancy agreement, and includes a prospective occupant.

**186B Agreements that are occupancy agreements**

- (1) An *occupancy agreement* is an agreement under which a person grants to another person for value a right to occupy specified residential premises as a residence (whether or not with other persons).
- (2) Without limiting the operation of subsection (1), this Part applies to occupancy agreements under which the person who is granted the right to occupy premises is:
- (a) a boarder or lodger in a private home, or
  - (b) a boarder in a boarding house, or
  - (c) an occupant of premises the subject of a residential tenancy agreement (such as a shared household) who, because of the operation of section 10, is not a tenant for the purposes of this Act, or
  - (d) a person who lives in a group home, or residential centre, for persons with disabilities, or
  - (e) an occupant of an educational institution or residential college, or
  - (f) an occupant of a hotel or motel or backpackers' hostel, or
  - (g) an occupant of a serviced apartment (that is, a building or part of a building used to provide self-contained tourist and visitor accommodation that is regularly cleaned by or on behalf of the owner or manager), or
  - (h) a person who lives in refuge or crisis accommodation, or
  - (i) a person who lives in supported accommodation (that is accommodation where persons are supported with daily living skills and other care), or
  - (j) a person who lives in a caravan in a caravan park who enters into an agreement to which neither the *Residential Parks Act 1998* nor the *Holiday Parks (Long-term Casual Occupation) Act 2002* applies, or
  - (k) a person of a class prescribed by the regulations for the purposes of this section.

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|-------------|---|--|
| (3)         | However, this Part does not apply:  | 1                                      |
| (a)         | to an agreement that is a residential tenancy agreement to which this Act applies, or   | 2<br>3                                 |
| (b)         | to an agreement to which the <i>Landlord and Tenant (Amendment) Act 1948</i> applies.   | 4<br>5                                 |
| (4)         | An occupancy agreement may be express or implied and may be oral or in writing, or partly oral and partly in writing.   | 6<br>7                                 |
| (5)         | An agreement may be an occupancy agreement for the purposes of this Part even though:   | 8<br>9                                 |
| (a)         | it does not grant a right of exclusive occupation, or   | 10                                     |
| (b)         | it grants the right to occupy residential premises together with the letting of furniture or goods or the provision of services or facilities.  | 11<br>12<br>13                         |
| (6)         | The right to occupy premises under an occupancy agreement may operate regardless of whether the same premises are also subject to a residential tenancy agreement.  | 14<br>15<br>16                         |
| (7)         | An occupancy agreement is terminated if the occupant under the agreement becomes a tenant under a residential tenancy agreement (including if the occupant is recognised by the Tribunal as a tenant under a residential tenancy agreement in pursuance of section 77 or 79). This subsection does not limit the circumstances in which an occupancy agreement may be terminated. | 17<br>18<br>19<br>20<br>21<br>22<br>23 |
| (8)         | This Part applies, so far as is reasonably practicable, to occupancy agreements in respect of residential premises whether made before or after the commencement of this section.   | 24<br>25<br>26                         |
| <b>186C</b> | <b>Commencement of an occupancy agreement</b>   | 27                                     |
|             | An occupancy agreement starts, or is taken to have started, on the earliest of the following days:  | 28<br>29                               |
| (a)         | the day stated in the agreement,  | 30                                     |
| (b)         | the first day both parties have signed the agreement and each has received a copy signed by the other,  | 31<br>32                               |
| (c)         | the day the occupant takes possession of the premises,  | 33                                     |
| (d)         | the first day the grantor receives rent from the occupant.  | 34                                     |

<b>186D</b>	<b>Occupancy principles</b>	1
(1)	The following principles (the <i>occupancy principles</i> ) apply in relation to occupancy agreements:	2
		3
(a)	an occupant is entitled to live in premises that are:	4
	(i) reasonably clean when the occupant moves in, and	5
	(ii) in a reasonable state of repair, and	6
	(iii) reasonably secure,	7
(b)	the grantor is entitled to set reasonable rules that the occupant will be required to comply with and an occupant is entitled to know the rules of the premises before moving in,	8
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(c)	an occupant is entitled to the certainty of having the occupancy agreement in writing,	12
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(d)	an occupant is entitled to be given a written receipt for the payment of any money to the grantor,	14
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(e)	an occupant is entitled to quiet enjoyment of the premises,	16
(f)	a grantor is entitled to enter the premises at a reasonable time on reasonable grounds to carry out inspections or repairs and for other reasonable purposes,	17
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		19
(g)	an occupant is entitled to reasonable notice before the grantor increases the amount to be paid for the right to occupy the premises and is entitled to know before moving in how much notice will be given,	20
		21
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(h)	an occupant is not liable to pay a penalty or fee for breach of any term of the agreement or any of the rules of the premises,	24
		25
		26
(i)	a grantor is entitled to charge for the use of a utility, provided that the amount charged is determined according to the cost to the grantor of providing the utility and a reasonable measure or estimate of the occupant's use of the utility,	27
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(j)	an occupant is entitled to know why and how the occupancy may be terminated, including how much notice will be given before eviction,	32
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		34
(k)	an occupant must not be evicted without reasonable notice,	35
(l)	a grantor and occupant should try to resolve disputes using reasonable dispute resolution processes.	36
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(2)	If an occupant occupies a moveable dwelling on land in a residential park or holiday park and the moveable dwelling is not provided by the grantor:	1
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		3
(a)	the occupancy principle in subsection (1) (a) applies to the site but does not apply to the moveable dwelling, and	4
		5
(b)	despite the occupancy principle in subsection (1) (f), the grantor is entitled to enter the moveable dwelling only with reasonable notice, at reasonable times, on reasonable grounds and for reasonable purposes, and	6
		7
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		9
(c)	the occupancy principle in subsection (1) (g) applies to the land and fixtures provided by the grantor, but not the moveable dwelling.	10
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		12
<b>186E</b>	<b>Regulations about occupancy agreements</b>	13
(1)	The regulations may make provision in relation to occupancy agreements, including, for example, standard occupancy terms.	14
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(2)	The regulations may provide for more than one form of standard occupancy agreement for use for different classes of residential premises, occupancy agreements or parties.	16
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(3)	A regulation that makes provision in relation to standard occupancy terms must not be made unless the Minister has certified that the regulation is consistent with the occupancy principles.	19
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<b>186F</b>	<b>Standard occupancy terms</b>	23
(1)	An occupancy agreement:	24
(a)	must contain, and is taken to contain, terms to the effect of the occupancy principles, and	25
		26
(b)	must contain, and is taken to contain, terms to the effect of the standard occupancy terms prescribed by the regulations.	27
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		29
(2)	Subsection (1) does not prevent an occupancy agreement from containing any other term, provided the term is consistent with:	30
		31
(a)	the standard occupancy terms prescribed by the regulations, and	32
		33
(b)	the occupancy principles.	34
<b>186G</b>	<b>Grantor must deposit bond</b>	35
(1)	The grantor under an occupancy agreement must deposit the amount of any bond under the agreement with the Director-General.	36
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Residential Tenancies Amendment (Occupancy Agreements) Bill 2011

Schedule 1 Amendment of Residential Tenancies Act 2010 No 42

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(2)	The amount of the bond must not be more than the equivalent of 2 weeks' rent.	1 2
(3)	The deposit must be accompanied by a written notice that states:	3
(a)	the names of, and addresses for service on, the occupant and the grantor, and	4 5
(b)	the amount of bond being deposited.	6
(4)	If the Director-General accepts the amount of the bond, the Director-General must:	7 8
(a)	give the grantor a receipt for the amount, and	9
(b)	give the occupant a copy of the notice under subsection (3).	10 11
(5)	If the Director-General accepts the amount of the bond, Divisions 1–3 of Part 8 (sections 158 and 159 excluded) apply in relation to the occupancy agreement as if:	12 13 14
(a)	the amount had been received by the Director-General under Part 8, and	15 16
(b)	the occupancy agreement were a residential tenancy agreement, and	17 18
(c)	the occupant were the tenant under the agreement, and	19
(d)	the grantor were the landlord under the agreement, and	20
(e)	any other necessary changes, and any changes prescribed by the regulations, were made.	21 22
(6)	This section extends to an occupancy agreement made before the commencement of this section.	23 24
<b>[9]</b>	<b>Section 187 Orders that may be made by Tribunal</b>	25
	Insert “, or a grantor or occupant,” after “tenant” where firstly occurring in section 187 (1).	26 27
<b>[10]</b>	<b>Section 187 (1) (a), (b), (e), (f) and (g) and (2) (b)</b>	28
	Insert “or occupancy agreement” after “residential tenancy agreement” wherever occurring.	29 30
<b>[11]</b>	<b>Section 187 (1) (h)</b>	31
	Omit “or tenant”.	32
	Insert instead “, grantor, grantor’s agent, tenant or occupant”.	33

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<b>[12] Section 187 (1) (k)</b>	1
Insert after section 187 (1) (j):	2
(k) an order directing a grantor or grantor’s agent to give a former occupant or person authorised by a former occupant access to residential premises for the purpose of recovering goods of the former occupant or fixtures that the former occupant is entitled to remove.	3 4 5 6 7
<b>[13] Section 187 (5)</b>	8
Insert after section 187 (4), before the note:	9
(5) In this section:	10
<i>occupant</i> has the same meaning as in Part 8A.	11
<b>[14] Section 189 Application of provisions relating to Tribunal</b>	12
Insert “, or a grantor or occupant,” after “or tenant” in section 189 (1).	13
<b>[15] Section 189 (1)</b>	14
Insert “, or a former grantor or former occupant” after “former tenant”.	15
<b>[16] Section 189 (3)</b>	16
Insert after section 189 (2):	17
(3) In this section:	18
<i>occupant</i> has the same meaning as in Part 8A.	19
<b>[17] Section 189A</b>	20
Insert after section 189:	21
<b>189A Tribunal must give effect to occupancy principles</b>	22
In considering a matter, or making a decision, under this Act in relation to a dispute between the parties to an occupancy agreement or a dispute that is about, or relates to, an occupancy agreement, the Tribunal is to give effect to the occupancy principles.	23 24 25 26 27
<b>[18] Part 9, Division 2, heading</b>	28
Insert “or occupancy agreements” after “agreements”.	29

<b>[19] Section 190A</b>	1
Insert after section 190:	2
<b>190A Applications relating to breaches of occupancy agreements or occupancy principles</b>	3 4
(1) A grantor or an occupant may apply to the Tribunal for an order in relation to:	5 6
(a) a breach of an occupancy agreement (including a breach of any term of the agreement that gives effect to an occupancy principle), or	7 8 9
(b) any other breach of an occupancy principle.	10
(2) Such an application must be made:	11
(a) in relation to a breach that occurred before the commencement of this section, within 28 days after the commencement of this section, or	12 13 14
(b) in relation to a breach that occurs on or after the commencement of this section:	15 16
(i) within the period prescribed by the regulations after the grantor or occupant becomes aware of the breach, or	17 18 19
(ii) within such other period as may be prescribed by the regulations.	20 21
(3) An application may be made:	22
(a) during or after the end of an occupancy agreement, and	23
(b) whether or not a termination notice has been given or a termination order has been made.	24 25
(4) A grantor's agent may make an application on behalf of a grantor.	26
(5) In this section:	27
<i>occupant</i> has the same meaning as in Part 8A.	28

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**[20] Schedule 2 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*Residential Tenancies Amendment (Occupancy Agreements) Act  
2011*

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