



New South Wales

# Residential Tenancies Amendment (Social Housing) Bill 2005

## Explanatory note

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

## Overview of Bill

The objects of this Bill are:

- (a) to amend the *Residential Tenancies Act 1987* (***the Principal Act***) in connection with social housing tenancy agreements as follows:
  - (i) to enable terms of a residential tenancy agreement that are prescribed by the regulations made under the Principal Act to extend to social housing tenancies in existence before the terms are prescribed,
  - (ii) to enable a landlord under a social housing tenancy agreement, the fixed term of which has ended, to declare that the agreement is subject to a further fixed term from a date specified in a notice given to the tenant,
  - (iii) to enable a landlord under a social housing tenancy agreement to require the tenant to pay charges for water usage to the landlord,
  - (iv) to make provision for the payment of debts by social housing tenants,
  - (v) to enable a social housing tenant whose rent rebate has been cancelled to apply to the Consumer, Trader and Tenancy Tribunal (***the Tribunal***) for an order declaring that the tenant's rent is excessive,

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\* Amended in committee—see table at end of volume.

- (vi) to enable a social housing tenancy agreement to be terminated if the landlord determines that the tenant is no longer eligible to reside in such premises,
  - (vii) to enable a social housing tenancy agreement to be terminated after the landlord offers the tenant a new tenancy agreement in respect of alternative social housing premises,
  - (viii) to remove an exemption applying to housing let by the New South Wales Land and Housing Corporation or the Aboriginal Housing Office from a requirement for advance notice to be given of rent increases,
  - (ix) to enable rent payable under a fixed term social housing tenancy agreement to be increased during the currency of the fixed term, and
- (b) to amend the *Aboriginal Housing Act 1998* and the *Housing Act 2001* to insert objects into those Acts aimed at ensuring the public housing system is focused on housing people who are most in need and that the available supply of housing is shared equitably among those people, and
- (c) to exempt social housing tenancy agreements from a requirement under the *Real Property Act 1900* for leases of more than 3 years duration to be executed in the approved form under that Act.

## 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 (except for Schedule 2.4) on a day or days to be appointed by proclamation. It provides for the commencement of Schedule 2.4 on the date of assent to the proposed Act. (See explanation of effect of Schedule 2.4 below.)

**Clause 3** is a formal provision that gives effect to the amendments to the *Residential Tenancies Act 1987* set out in Schedule 1.

**Clause 4** is a formal provision that gives effect to the amendments to the Acts set out in Schedule 2.

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

**Schedule 1 [1]** inserts a new definition of *social housing tenancy agreement* into the Principal Act for the purposes of the proposed amendments to the Principal Act.

**Schedule 1 [2]** inserts proposed section 9A into the Principal Act, which enables terms of a residential tenancy agreement that are prescribed by the regulations made under the Principal Act to extend to social housing tenancies in existence before the terms are prescribed.

**Schedule 1 [3]** inserts proposed section 14A into the Principal Act, which enables a landlord under a social housing tenancy agreement, the fixed term of which has

ended, to declare that the agreement is subject to a further fixed term from a date specified in a notice given to the tenant. The proposed section replaces an uncommenced provision in the *Residential Tenancies Amendment (Public Housing) Act 2004*, which is in almost identical terms to the proposed section, but applies only to public housing tenancy agreements. (See **Schedule 2.4.**)

**Schedule 1 [5]** inserts proposed sections 19A and 19B into the Principal Act.

Proposed section 19A enables a landlord under a social housing tenancy agreement to require the tenant to pay to the landlord charges for water usage determined in accordance with guidelines approved by the Minister. Under proposed section 19A (2) those charges may be payable in advance, and may be determined by reference to actual or estimated usage, the income of the tenant or the rent payable for the premises occupied by the tenant.

Proposed section 19B makes provision for the payment of a debt incurred by a tenant to a landlord in connection with an existing social housing tenancy agreement or a prior tenancy agreement.

**Schedule 1 [4]** is consequential on the insertion of proposed section 19A.

**Schedule 1 [7]** inserts proposed section 47A into the Principal Act, which enables a tenant under a social housing tenancy agreement whose rent rebate has been cancelled to apply to the Tribunal for an order declaring that the tenant's rent is excessive. The amendments made by **Schedule 1 [6]** and **[8]–[11]** are consequential on this amendment.

**Schedule 1 [12]** inserts a new Division 2A into Part 5 of the Principal Act, which contains provisions relating to the termination of social housing tenancy agreements on two new grounds. The two new grounds, set out in proposed sections 63B and 63F, are as follows:

- (a) that the landlord has determined, as a result of an eligibility assessment, that the tenant is not eligible to reside in the class of social housing premises to which the agreement applies,
- (b) that the landlord has offered to enter into a new tenancy agreement with the tenant in respect of alternative premises to those currently occupied by the tenant.

Proposed sections 63C, 63D and 63E make further provision in relation to giving notice of termination on the ground that the landlord has determined that the tenant is not eligible to reside in the class of social housing premises to which the agreement applies. Proposed section 63C provides for the assessment of the eligibility of the tenant to reside in the class of social housing premises concerned. Proposed section 63D provides for the tenant to be given reasons for the decision to give the notice of termination and a right to a review of the decision before the landlord gives that notice. Proposed section 63E sets out various time periods that must be observed in giving the notice of termination.

Proposed sections 63G and 63H make further provision relating to giving notice of termination on the ground that the landlord has offered to enter into a new tenancy agreement with the tenant in respect of alternative premises to those currently occupied by the tenant. Proposed section 63G provides for the tenant to be given reasons for the decision to give the notice of termination and a right to a review of the decision before the landlord gives that notice. Proposed section 63H sets out various time periods that must be observed in giving the notice of termination. It also provides that the notice of termination is ineffective unless the alternative premises are available for occupation no later than 7 days before the day specified in the notice as the day on which the premises the subject of the existing agreement are to be vacated.

**Schedule 1 [13]** is a consequential amendment.

**Schedule 1 [14]** recasts the existing section 64 (2) of the Principal Act.

**Schedule 1 [15], [18] and [23]** make consequential amendments to sections 64 and 66 in relation to the termination of social housing tenancy agreements by the Tribunal following the giving of notices on the two new grounds referred to in proposed sections 63B and 63F. (See **Schedule 1 [12]**.)

**Schedule 1 [16] and [17]** are consequential amendments.

**Schedule 1 [19]–[22]** make amendments by way of statute law revision.

**Schedule 1 [24]** amends section 132 (1) of the Principal Act to remove an exemption applying to housing let by the New South Wales Land and Housing Corporation and the Aboriginal Housing Office from a requirement under section 45 of that Act for 60 days advance notice to be given of rent increases.

Section 45 (4) of the Principal Act currently provides that rent payable under a fixed term residential tenancy agreement is not to be increased during the currency of the fixed term unless the amount of the increase, or a method for calculating that amount, is set out in the agreement. **Schedule 1 [25]** amends section 132 of the Principal Act to exempt premises let under social housing tenancy agreements from this restriction.

**Schedule 1 [26]** amends clause 1 of Schedule 4 to the Principal Act to enable the Governor to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

**Schedule 1 [27]** inserts a new Part in Schedule 4 to the Principal Act. It provides for the extension of proposed sections of the proposed Act to social housing tenancy agreements entered into before its commencement.

## **Schedule 2      Amendment of other Acts**

**Schedule 2.1** amends section 3 of the *Aboriginal Housing Act 1998* to provide that an object of that Act is to ensure that the available supply of housing under that Act is shared equitably among Aboriginal people and Torres Strait Islanders who are most in need.

**Schedule 2.2** amends section 5 of the *Housing Act 2001* to provide for the inclusion of two further objects of that Act, namely:

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

**Schedule 2.3** amends section 53 of the *Real Property Act 1900* to remove any requirement for a lease of land that is registered under that Act and the subject of a social housing tenancy agreement to be executed in the approved form under that Act.

**Schedule 2.4** omits an uncommenced provision of the *Residential Tenancies Amendment (Public Housing) Act 2004* as a consequence of its replacement by the amendment set out in **Schedule 1 [3]**.