



New South Wales

Housing Amendment (Tenant Fraud) Bill 2008

Explanatory note

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

Overview of Bill

The object of this Bill is to reduce tenant fraud with respect to public housing by amending the *Housing Act 2001* (***the Principal Act***):

- (a) to provide for a penalty of 3 months imprisonment for offences under section 69 (false statements and representations) of the Principal Act, and
 - (b) to create an offence if a person intentionally fails to notify the New South Wales Land and Housing Corporation (***the Corporation***) of a change in the person's circumstances that removes or reduces the person's entitlement to a benefit, and
 - (c) to allow the Corporation to access and use information on certain registers for the purpose of preventing, investigating or prosecuting fraud, and
 - (d) to make a person who lives with a tenant who improperly obtains a benefit from the Corporation liable in certain circumstances to repay the benefit, and
 - (e) to permit the Corporation, in respect of certain debts, to place a charge on land owned by the debtor or to recover the debt by reducing a benefit payable to the debtor, and
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- (f) to provide that a prosecution or proceedings in respect of an offence under the Principal Act may only be instituted by the Corporation, and
- (g) to provide an amnesty for certain persons who notify the Corporation that they are incorrectly or improperly obtaining a benefit from the Corporation.

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.

Clause 3 is a formal provision that gives effect to the amendments to the *Housing Act 2001* set out in Schedule 1.

Clause 4 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced.

Schedule 1 Amendments

Schedule 1 [1] provides for a penalty of 3 months imprisonment for an offence under section 69 (1) or (2) of the Principal Act which relate to fraudulently obtaining accommodation or a rental rebate or any other advantage or concession from the Corporation.

Schedule 1 [2] inserts proposed sections 69A and 69B in the Principal Act.

Proposed section 69A creates an offence (maximum penalty \$2,200 or 3 months imprisonment, or both) if a person intentionally fails to notify the Corporation of any change in the person's circumstances that removes or reduces the person's entitlement to accommodation or a rental rebate or any other advantage or concession from the Corporation. The notification is to be given within 28 days after the person first becomes aware of the change and that his or her entitlement will be removed or reduced because of the change.

Proposed section 69B permits the Corporation, for the purposes of preventing or investigating fraud against the Corporation, or prosecuting a person for any such fraud, to request, collect, use and disclose information (including personal information) from certain registers of information, including the driver licence register.

Schedule 1 [3] inserts proposed sections 72A and 72B in the Principal Act.

Proposed section 72A provides that a person who lives or has lived with another person (the *tenant*) who obtains a benefit from the Corporation (whether or not as a tenant of the Corporation) is jointly and severally liable for certain amounts owed to the Corporation by the tenant if the amount is owed because the tenant improperly obtained a benefit to which the tenant was not entitled because of the person living there and the person was over 18 years at the time and knew, or should reasonably have suspected, that the tenant was improperly obtaining the benefit.

Proposed section 72B permits the Corporation after obtaining an order of a court in proceedings against a person for the recovery of money, to apply to the Registrar-General for registration of the order as a charge on land owned by the person. Such an application may only be made if 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.

Schedule 1 [4] permits the Corporation to recover an amount awarded to it by a court in debt proceedings against a person by reducing or cancelling any rental rebate to which the person may otherwise be entitled.

Schedule 1 [5] provides that a prosecution or proceeding in respect of an offence under the Principal Act may only be instituted by or on behalf of the Corporation.

Schedule 1 [6] amends Schedule 3 to the Principal Act to enable the regulations to make provision for matters of a savings and transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [7] inserts a number of savings and transitional provisions in the Principal Act as a consequence of the amendments made by the proposed Act. In particular, the provisions provide for an amnesty in certain circumstances for persons who notify the Corporation that they are incorrectly or improperly obtaining a benefit from the Corporation. If a person notifies the Corporation of his or her conduct before the end of the amnesty period (1 October 2008 or such other day as may be prescribed by the regulations) and before the Corporation has commenced an investigation into the conduct, the person cannot be prosecuted for any fraud offence in relation to that conduct (other than an offence that involves violence or a threat against a person) and no action or proceeding may be brought by the Corporation to recover any penalty, damages or other money from the person in respect of the conduct or any benefit obtained as a result of that conduct before the notification.