

One step closer

The draft Residential Tenancies Bill 2009

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At last, the long-awaited draft Residential Tenancies Bill 2009 has been released by the NSW Government for public comment.

The draft Bill is the result of a long-running review of the *Residential Tenancies Act 1987* (the current law that sets out tenants' rights and obligations). If, as is expected, it is implemented next year, it will be the first comprehensive overhaul of the state's renting laws since the current Act commenced twenty years ago.

The Tenants' Union is poring over the details of the draft Bill and we will make a formal submission later this month. Here's our preliminary guide to what's proposed in the draft Bill.

Access to premises

The provisions for landlords accessing premises to show them to prospective purchasers are, in our view, probably the most disappointing and troublesome of the draft Bill.

It envisages landlords and tenants making agreements as to the days and times for access. This

is fine, but it then undermines any negotiations by giving landlords everything they could want: access on 24 hours notice, without limit to the number of visits, plus a big stick – fines of up to \$2,200 for tenants who refuse to give reasonable access.

We think agreements as to access will only happen when landlords' rights of access are restricted and they have a reason to negotiate for more. There's a couple of other access provisions that could do with tightening up too.

Alterations

A tenant would still have to get their landlord's written consent

to make alterations and install fixtures, but where the alteration is minor or cosmetic, the landlord may not unreasonably refuse.

Tenants would have to make good any damage or loss of value when they leave, and they would also lose their current statutory right to compensation for fixtures they've had to leave behind... but clever landlords know how to avoid that liability anyway. All in all, the draft Bill's provisions are probably a little better.

Break fees

A tenant who breaks a tenancy early by moving out in the fixed term of their tenancy agreement would be liable to pay a 'break fee'.



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This fee would be four or six weeks rent (depending on how early they're breaking) instead of paying rent until a new tenant moves in plus the landlord's re-advertising costs, a re-letting fee etc. as now.

The break fee has the potential to deliver a windfall to landlords – particularly the six-week fee, which is too high. A flat four-week fee would be more straightforward than the current situation and, on balance, good for tenants.

Co-tenants

There are big improvements for people on tenancy agreements with one or more other tenants. Under current laws, a co-tenant who moves out cannot end their liability for rent and other costs.

The draft Bill would fix this by allowing a co-tenant to give a termination notice to the landlord and the remaining co-tenants. It would also improve the process for transferring a tenancy when a new person moves in to replace a departing co-tenant and allow, in special circumstances, a co-tenant to apply to the Consumer, Trader and Tenancy Tribunal (CTTT) to terminate the tenancy of another of their co-tenants.

Domestic violence

Where a final apprehended violence order excludes a person from premises of which they are a co-tenant, the draft Bill would automatically terminate their tenancy while leaving the tenancies of other co-tenants on foot. A very sensible reform that

helps victims of domestic violence get their tenancy arrangements sorted out.

Exclusions

Those renters who are kept out of the current Act – for example, boarders and lodgers – are out of the draft Bill too. There's one exception to this: people who rent

Legislated rules about tenant databases ... these are some of the draft Bill's most welcome provisions

from educational institutions are excluded from the current Act, but not the draft Bill – though we anticipate they will be excluded later by regulation.

The draft Bill would exclude some additional groups of renters too, such as residents of refuges and crisis accommodation, serviced apartments and sharehouses. In the case of sharehouse residents, only those who have written agreements or who have become tenants by transfer or CTTT order are covered, otherwise they're lodgers.

The exclusions make more urgent the need for occupancy legislation that covers all 'marginal' rental housing.

Long-term tenancies

Tenancy agreements with a fixed term of 20 years or more would be allowed to leave out many of the usual terms, like those relating to repairs.

An interesting development, but of little practical importance: virtually no-one – landlord or tenant – is interested in a 20-year fixed-term tenancy.

Rent arrears

Landlords would be able to commence proceedings to terminate tenancies more quickly, but tenants would be assured that if they pay the arrears, their tenancy is saved – even if the CTTT has already ordered termination.

On balance, this is an improvement for tenants, and landlords too. At the moment, if tenants get a termination order, many won't pay the arrears and will use the money instead to move and set up their next tenancy. The draft Bill would see more tenancies saved and more landlords paid. Win-win.

Rent payments and receipts

Some useful reform here: tenants would be able to request a statement of rent payments from their landlords, and landlords would have to provide at least one method of rent payment that does not impose a cost on the tenant.

So, tenants can say goodbye to those rent-card companies that

charge tenants for the privilege of collecting their rent.

Residential tenancy databases

Finally: legislated rules about tenant databases (sometimes known as tenant blacklists) that apply to landlords, agents and operators of databases. The rules set out how a person may be listed and provide for resolution of disputes about listings through the CTTT.

These are some of the draft Bill's most welcome provisions – but we know at least one tenant database operator cannot see a regulatory loophole without diving through it, so we'll be suggesting a number of measures to tighten these provisions up.

Social housing

All the current special provisions relating to social housing are incorporated, virtually without change, in the draft Bill. The only exception is that the drafters have omitted the grandfather clause that prevented pre-July 2005 social housing tenants from

being given termination notices on grounds that they were no longer eligible. We think it's an oversight and will be asking that it goes back in.

Terminations by tenants

A tenant would have some useful new grounds for terminating their tenancy during the fixed term: the tenant has been offered social housing, and the tenant is to go into aged care.

The draft Bill provides another new ground: that the premises are for sale, and the landlord did not disclose the sale before entering into the tenancy agreement. But this is too narrow to be useful. We think tenants should be able, without qualification, to give a notice of termination if the premises are put up for sale.

Terminations 'without grounds'

One of the disappointing aspects of the draft Bill. Landlords would retain their current ability to give notices of termination 'without

grounds'. This makes renting unnecessarily insecure.

Notice periods would be increased from the current 60 days to 90 days (and from 14 days to 30 days for notices at the end of a fixed term).

This is good for tenants, but the CTTT loses its little-used but important power to refuse to order termination – that is, the new Bill ensures that termination notices without grounds will *always* end a tenancy. (One exception: the CTTT retains its discretion where the tenant has been in occupation for 20 years or more).

The law should be trying to get landlords away from using notices without grounds, not making them more attractive.

Uncollected goods

If you're evicted, the draft Bill does not give you long to get your goods out of the premises – just 14 days before the landlord can dispose of them as they see fit (including dumping them at op-shops).

Fortunately, personal documents must be stored longer – 90 days – and the draft Bill does give a former tenant a right to compensation if the landlord disposes of goods unlawfully.

We think the draft Bill's protections for tenants' uncollected goods should be backed up with some penalties, but overall it would help restrain some of the abuses that currently go on when goods are left behind after termination of a tenancy. ■

Have your say on the draft Bill

NSW Fair Trading is calling for feedback on the draft Bill.

For a copy of the Bill and details about how to make a submission:

- see www.fairtrading.nsw.gov.au and follow the link 'Have your say on proposed tenancy reforms', or
- call Fair Trading on 13 32 20.

Submissions close on 18 December 2009.

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I would like to apply for membership of the Tenants' Union of NSW Co-operative Limited (ABN 88 984 223 164)

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Last name

Position (organisations only)

Organisation

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Suburb

State

Postcode

E-mail

Phone (W)

Phone (H)

Membership type:

- ☐ tenant ☐ tenant organisation
☐ non-tenant ☐ non-tenant organisation
☐ other (please specify):

Fees: (all include GST) • unwaged \$8.00
• waged \$16.00 • organisation \$32.00

Annual fee runs 1 January–31 December.
New members can pay half fees after 30 June.
First membership fee covers cost of share.

Payment: Please find enclosed cheque/money order to the Tenants' Union of NSW for:

Membership \$

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Total \$

I am over 18 years of age. I support the objectives of the Tenants' Union of NSW.

Signed

Date

Return with payment to Tenants' Union of NSW
Suite 201, 55 Holt St, Surry Hills NSW 2010

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Inner Western Sydney	9559 2899
Southern Sydney	9787 4679
South Western Sydney	1800 631 993 4628 1678
Eastern Sydney	9386 9147
Western Sydney	8833 0911
Northern Sydney	9884 9605
North Western Sydney	1800 625 956 9413 2677
Blue Mountains	1300 363 967
Central Coast	4353 5515
Hunter	1800 654 504 4969 7666
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Aboriginal services

Greater Sydney	9569 0222
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Tenants NSW website www.tenants.org.au



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Tenants' Union of NSW

The Tenants' Union of NSW is a specialist community legal centre that has been active in promoting the rights of over 1.5 million tenants in New South Wales since 1976.

The Tenants' Union is also the peak resourcing body for the NSW Tenants Advice and Advocacy Program.

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