

**Submission on
Draft Residential Tenancies Bill 2009**

Shelter NSW
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About Shelter NSW

Shelter NSW is a nonprofit social change agency that promotes the housing interests of low-income and disadvantaged people in New South Wales. Shelter's mission is to work for a just and equitable housing system.

Contacts:

Mary Perkins
Executive Officer
Ph. 9267 5733 ext. 14
mary@shelternsw.org.au

Paula Rix
Senior Policy Officer
Ph. 9267 5733 ext. 12
paula@shelternsw.org.au

Shelter NSW
www.shelternsw.org.au
Suite 2, Level 4, 377 Sussex Street, Sydney 2000

Introduction

Shelter NSW welcomes the opportunity to comment on the Draft Residential Tenancies Bill 2009. In doing so, we note that this our third submission to the three consultation phases associated with the review of existing tenancy law.

We note that the draft Bill is the result of a long running review of the Residential Tenancies Act 1987 and in the event of its implementation next year, will be the first comprehensive overhaul of the State's renting laws since the current Act commenced twenty years ago.

We welcome the many positive provisions of the Bill and accordingly will make a brief submission confined to some areas in the draft Bill which we believe warrant further consideration, improvement or inclusion.

Shelter NSW comment on the draft Bill is largely informed by the substantive and detailed analysis of the Bill by the Tenant's Union of NSW. This submission is confined to general remarks

Comment

It is our view that most of the changes that the draft Bill would make to the current law are improvements. In particular, the draft Bill's provisions in relation to co-tenants, new grounds for termination by tenants, rent payments and receipts, holding fees and break fees appear to be very good and present little or no level of difficulty.

There are four significant areas of the draft Bill where there appears to be ambiguities, shortcomings or flaws, namely: Sales of premises; Termination without grounds; Rent arrears, and Residential tenancy data bases.

This submission will comment in general on the abovementioned areas as well as miscellaneous other issues affecting the interests of tenants and potential tenants under the expected new Act.

Discussion of issues

Exclusions

Despite our previous submissions regarding coverage of the Act and the need for its extension to persons living in rental accommodation who are not covered by tenancy legislation, Shelter NSW is disappointed that those renters who are not covered by the current Act – for example, boarders and lodgers – are out of the draft Bill too.

While there is one exception to this: educational institutions are excluded from the current Act, but not the draft Bill - we note the Tenants' Union's supposition that they are likely to be excluded later by regulation. We note also that the draft Bill would exclude some additional groups of renters, such as residents of refuges and crisis accommodation, serviced apartments and shared houses. We observe that in the case of sharehouse residents, only those who have written agreements or who have become tenants by transfer or Tribunal order are covered, otherwise the remainder are still deemed as lodgers.

Shelter NSW reiterates that these exclusions make more urgent the need for occupancy legislation that covers all marginal rental housing.

Sale of premises

We note that the draft Bill would make two sets of changes relating to a tenant's rights in the event of their landlord placing the premises on the market for sale.

The first set, relate to access for the purpose of showing the premises to prospective purchasers. We consider this set of changes to be the most disappointing of the draft Bill. The draft Bill envisages landlords and tenants making agreements as to the days and times for access; we support the intention, but it is undermined by other related provisions in the draft Bill. There is no spur to landlords to negotiate genuinely with tenants about access: clause 55 (i) gives them very ready access on an ad hoc basis (24 hours' notice without limit as to the number of instances of access). Furthermore, we believe that landlords and agents may use the threat of a \$2200 fine for refusal of access without reasonable excuse (cl 58(2)) to intimidate tenants into accepting oppressive arrangements for access.

We concur with the Tenant's Union's argument in their Submission to the Government's 2007 proposals: that genuine negotiation as to access can happen only if a landlords' statutory right of access is limited.

The second set of changes in the draft Bill on the issue of sale of premises, relate to providing a tenant with a new ground for termination of a fixed term agreement where the landlord proposes to sell the premises and did not disclose the proposed sale before entering into the agreement. We support the intention of this provision, but are concerned that it may be thwarted by the landlord placing an additional term in all their agreements to the effect that the premises may be sold at any time. We support the Tenant's Union's recommendation that the qualification relating to disclosure should be removed, so that a tenant may give a termination notice on the ground that the landlord proposes to sell the premises.

Terminations without grounds

We note that the draft Bill would allow landlords to retain their current ability to give notices without grounds. This is one of the issues that contributes to making renting unnecessarily insecure. We recommend the law should specify a range of reasons and circumstances where a tenancy can be terminated.

In addition we note that in the draft Bill, the Tribunal loses its little used, but important power to refuse an order for termination (the one exception being when the tenant has been in occupation for 20 years or more). We recommend that the tribunal keep this discretion.

Rent Arrears

The draft Bill would allow landlords to commence termination proceedings more quickly, but would also entrench the principle that paying arrears, either in full or according to a repayment plan, will save a tenancy. Taken as a whole, the draft Bill's provisions are welcome; its provisions would see more tenancies saved and more landlords paid.

However, we would like to see greater clarity about how this process will be implemented. If the intention is that once a tenant has made good the rent arrears or is paying according to a time payment that action in the tribunal will be suspended, rather than terminated, this should be specified in the Bill. Also, it is important to specify the circumstance in which any suspended action for rent arrears ceases and the tenancy reverts to a normal arrangement.

Residential tenancy data bases (RTDs)

The inclusion in the draft Bill of provisions relating to RTDs is very welcome. It is heartening that finally there will be legislated rules about tenant data bases that apply to landlords, agents and operators of data bases, that set out how a person may be listed, and that provide for resolution of disputes about listing through the Tribunal.

Shelter NSW wishes to strongly endorse the Tenant's Union submission's comments on this area of the draft Bill which are directed to making this scheme work and closing any potential loopholes. We note that the Tenants' Union's submission has identified and discussed measures for provisions under the following headings to be tightened:

- *The definitions.*
- *Reasons for listing.*
- *Ensuring Quality of listings.*
- *Provision of copies of information.*
- *Disputes.*
- *Existing listings.*
- *Orders against RTD operators*
- *Penalties*

Social Housing

It is clear that all the current special provisions relating to social housing are incorporated in the draft Bill, except however for the omission of 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 believe this is an oversight but request that it goes back into the Bill.