



Redfern Legal Centre

Changes to Anti-Social Behaviour Laws in Social Housing



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Redfern Legal Centre

Acknowledgement of Country

Changes to Anti-Social Behaviour Laws in Social Housing

1. Introduction: The new laws
2. Terminations prior to 2015
3. The main changes
4. The Three Strikes scheme
5. Mandatory evictions
6. Rental subsidies
7. Questions; How to get tenancy advice

RESOURCES: rlc.org.au/training/resources/anti-social

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Introduction: New laws

Came into force in December 2015

Changes to:

- *Residential Tenancies Act 2010*
- *Housing Act 2001*

Affects what the tribunal can consider when social housing landlords seek termination.

What is *anti-social behaviour?*

FACS Housing policy definition:

“Antisocial behaviour is behaviour which disturbs the peace, comfort or privacy of other tenants or neighbours or the surrounding community which results in a breach of the tenancy agreement under the provisions of the Residential Tenancies Act 2010”

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Terminations before November 2015

General breach:

- NCAT must consider whether breach is sufficient to justify termination
- Wide discretion
- Still exists

Illegal use (drug offences & other kinds of illegal use):

- Previously there was a wide discretion

Serious damage or injury by tenant or other occupant:

- Previously there was a wide discretion

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The main changes

1. Three strike scheme
2. Mandatory evictions for certain breaches
3. Cancellation of rent subsidy as rent arrears

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Three strikes scheme

- Termination for breach generally – only where a breach is **sufficiently serious to justify termination**
- The scheme is aimed at less serious breaches of the tenancy agreement
- Three strikes in 12 months → termination

Breaches

Examples:

- obscene language or bullying and harassment towards neighbours or visitors
- noise causing nuisance
- leaving large amounts of rubbish in the home or common areas

The process

Strike notice issued by social housing provider

Tenant has 21 days to provide submissions in response (first tier appeal)

Social housing provider will consider submission

Social housing provider withdraws strike

Social Housing provider upholds strike

Tenant has 21 days to ask for a review of this decision (HAC)

Three strikes scheme (continued)

- If within 12 months a tenant has 2 recorded strikes and they breach for a third time, the housing provider can issue a termination notice and go to the tribunal for eviction
- There is no opportunity for tenant to ask for an internal review of the third strike notice.

Why appeal?

- 21 day time limit
- If a tenant doesn't respond to the initial strike notice by providing submissions, **then the strike is legally proven**
- If a tenant doesn't appeal the decision of the social housing provider to uphold issuing of the strike notice **then the strike is legally proven**

Appealing a strike notice

First – Get advice!

The notice itself must fulfill these requirements:

1. Must be in writing; and
2. Must inform them a strike has been recorded; and
3. Must set out details of allegations; and
4. Must remind them of other strikes in previous 12 months; and

Appealing a strike notice (continued)

5. Must warn them that if a third strike is recorded in 12 months a termination notice may be given; and
6. Must inform the tenant of their right to review; and
7. Must tell them how to make submissions and by which date; and
8. Must warn them that if they don't make submissions, the strike will be taken to be legally proven in NCAT.

Appealing a strike notice (continued)

Factual errors should be disputed and backed up with evidence where possible.

If there was a breach:

- The reasons for the breach
- The client circumstances
- What is being done to address the breach

Provide evidence for everything.

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Mandatory evictions: the previous law

- The tribunal had a much wider discretion and could consider many more issues when determining whether to terminate a tenancy.

Mandatory evictions: the new law

- Applies to breaches relating to damage to people or property, or illegal use of the property.
- FACS Housing Policy defines this as **severe illegal behaviour**.
- The Tribunal **MUST** terminate if the breach is proven **UNLESS** one of three exceptions applies. There are different exceptions for different breaches.

The exceptions

- 1) The breach was not committed by the tenant.
- 2) The tenant satisfies the tribunal there are other exceptional circumstances which mean the tenancy should not be terminated.

The exceptions (continued)

- 3) The tribunal is satisfied that termination would result in undue hardship to someone living in the household who is:
- A child
 - A domestic violence survivor
 - A person with a disability.

Breach = Damage to property

Tribunal MUST terminate UNLESS

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graph TD; A[Tribunal MUST terminate UNLESS] --> B[Other exceptional circumstances]; A --> C["Undue hardship to:  
- child  
- DV survivor  
- person with a disability who lives in the property"]
```

Other exceptional circumstances

Undue hardship to:

- child
- DV survivor
- person with a disability who lives in the property

Breach = Injury to people

Tribunal MUST terminate UNLESS



Less serious injury



Serious injury



and



and



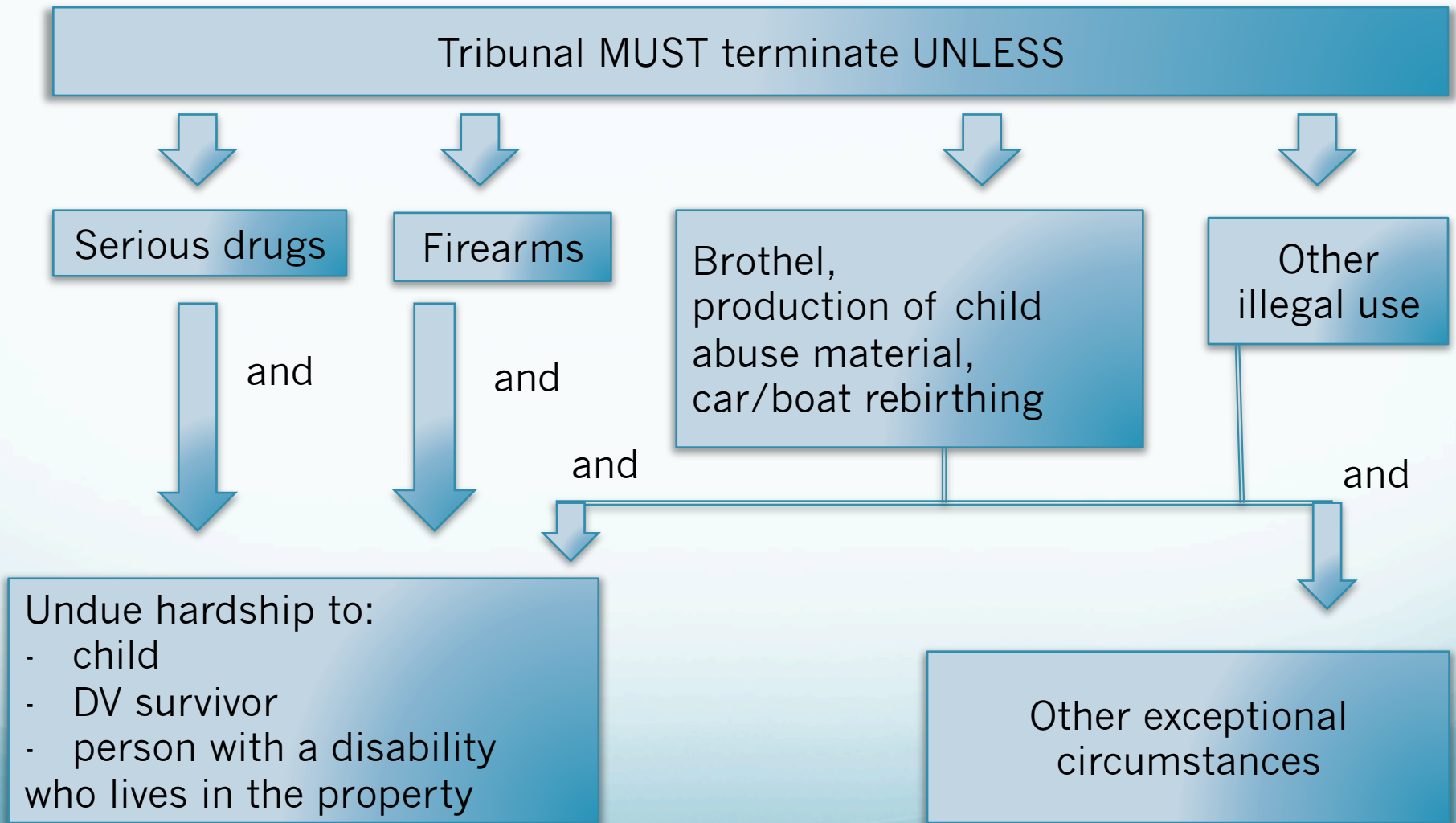
and

Undue hardship to:

- child
- DV survivor
- person with a disability who lives in the property

The injury was not committed by tenant

Breach = illegal use of the property



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Rental subsidy - the **old** law

- What is a rental subsidy?
- Retrospective cancellation
- **The Diab decision:**
Debt arising from cancellation of rental subsidy **DOES NOT EQUAL** rent arrears.
Cannot terminate for this reason.

Rental subsidy – the **new** law

- A debt arising from a cancellation of a rent subsidy **DOES EQUAL** rental arrears and the social housing provider **CAN** apply for termination.

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7. **Questions; How to get tenancy advice**

Find local tenant advisor: tenants.org.au

The screenshot displays the homepage of tenants.org.au. At the top, there is a header with the text "TENANTS NSW" and "Information, Advice and Advocacy" in white on a dark background. Below this is a navigation bar with three links: "Tenancy info", "News and policy", and "Contact us". A search bar is located in the top right corner of the header area. Below the navigation bar, there is a section titled "POPULAR TOPICS:" followed by a grid of eight blue buttons, each with a white icon and text. The buttons are: "Starting a tenancy" (house icon), "Rent and bond" (dollar sign icon), "Eviction" (hand pointing icon), "You want to leave" (truck icon), "Repairs and utilities" (water tap icon), "Privacy, access and security" (key icon), "Share houses, boarders and lodgers" (group of people icon), and "Public, community & Aboriginal housing" (circular pattern icon). At the bottom, there is a section titled "GET ADVICE FROM YOUR LOCAL TENANT ADVOCATE:" which includes a search bar with the placeholder text "Enter your suburb or postcode..." and a "Go" button. To the right of the search bar is a red button with white polka dots and the text "Aboriginal Tenant Services".

TENANTS NSW
Information, Advice and Advocacy

Search

Tenancy info News and policy Contact us

POPULAR TOPICS:

- Starting a tenancy
- Rent and bond
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GET ADVICE FROM YOUR LOCAL TENANT ADVOCATE:

Enter your suburb or postcode... Go

Aboriginal Tenant Services

Questions?

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Tenants Advice and Advocacy
Service, Redfern Legal Centre

RESOURCES: rlc.org.au/training/resources/anti-social

This workshop is a guide to the law in NSW, Australia. It is not a substitute for legal advice. If you have a legal problem, seek legal advice from a legal centre or Legal Aid.

Before you go...

Future webinars:

rlc.org.au/training

Your feedback helps us improve our training... So (live webinar participants), please stay online for 30 seconds more.



Training: rlc.org.au/training

Enquiries: Nick Manning

education@rlc.org.au

RLC can come to you

We can present this workshop at your staff training or interagency... or we can customise training to suit your needs.

Enquiries:

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(02) 9698 7277

education@rlc.org.au

Our law training topics

- Tenancy
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