Regulatory Impact Statement

Residential Tenancies Regulation 2019 – July 2019

NSW GOVERNMENT

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Executive summary

Currently around one-third of private dwellings in NSW are rented[1]. In the past, renters were primarily young people who rented for only a short time. However, more people are now renting for longer and families and older people are making up a larger portion of tenants. With this continuing growth and variation to the tenancy demographic, it is increasingly important that there is in place a modern and efficient regulatory system for residential tenancies that is responsive to the needs of the community.

The *Residential Tenancies Act 2010* (the Act) is currently supported by the *Residential Tenancies Regulation 2010* (the Regulation). The Regulation is scheduled for automatic repeal on 1 September 2019 under the *Subordinate Legislation Act 1989*. This repeal has been postponed while the proposed regulation is developed. Once finalised, the proposed Regulation will replace the current Regulation.

The Act establishes the rights and obligations of tenants and landlords that are party to a residential tenancy agreement in NSW. The legislation covers a range of matters including termination of a tenancy agreement, repairs to property, rent increases and disclosure requirements.

A statutory review of the Act was undertaken in 2015 and the report tabled in Parliament on 23 June 2016. The report made 27 recommendations to improve the operation of the Act, following consideration of public submissions and consultation with key stakeholders.

The *Residential Tenancies Amendment (Review) Act 2018* (Amendment Act) improves protection and certainty for tenants while ensuring that landlords can protect their investment and effectively manage their properties. It implements the majority of recommendations made by the statutory review, as well as a number of additional reforms that evolved throughout consultations. It received assent on 26 October 2018.

The Amendment Act contains provisions that will increase protections for tenants who are victims of domestic violence. These changes commenced on 28 February 2019.

The proposed Residential Tenancies Regulation 2019 (the proposed Regulation) has been prepared to:

- support the commencement of the remaining changes in the Amendment Act, and
- modernise provisions in the Regulation to ensure the legislation continues to meet the needs of tenants and landlords now and in the future.

Key changes to the Regulation include:

- updating the standard form of residential tenancy agreement and condition report
- prescribing the mandatory terms that must not be excluded in a long-term lease agreement of 20 years or more.

[1] 2016 Census QuickStats, New South Wales

- expanding the types of material facts the landlord or landlord's agent must not knowingly conceal from a prospective tenant to include that the property was the scene of a drug crime in the past 2 years
- clarifying the manner and time period in which a landlord must conduct urgent repairs to a smoke alarm
- prescribing a list of minor alterations that a tenant may carry out on the rental property, for which it would be unreasonable for a landlord to refuse consent
- providing some exemptions for social housing providers where this is appropriate
- prescribing penalty amounts for new offence provisions.

This Regulatory Impact Statement (RIS) explains the objectives and rationale of the proposed Regulation. It further:

- assesses the available costs and benefits of the draft Regulation to ensure that the proposed option is necessary, appropriate and proportionate to risk
- identifies the option which provides the greatest net benefit for all affected stakeholders.

The RIS seeks to facilitate public consultation on the proposed Regulation among stakeholders and the community. This RIS should be read in conjunction with the proposed Regulation.

Consultation process

Making a submission

Interested organisations and individuals are invited to provide a submission on any matter relevant to the proposed Regulation, whether or not it is addressed in this RIS. You may wish to comment on only one or two matters of particular interest, or all of the issues raised. Matters covered by the principal Acts – *Residential Tenancies Act 2010* and the *Residential Tenancies Amendment (Review) Act 2018* are not the subject of the consultation process.

Submissions can be made by email and the Department requests that any documents are provided in an 'accessible' format. Accessibility is about making documents more easily available to those members of the public who have some form of impairment (visual, physical, cognitive). Further information on how you can make your submission accessible is contained at http://webaim.org/techniques/word/.

We invite you to read this paper and provide comments. Additional copies of the RIS and the proposed Regulation can be downloaded from the consultation section of the NSW Fair Trading website at www.fairtrading.nsw.gov.au. Printed copies can be requested from NSW Fair Trading by phone on 13 32 20.

Please forward submissions by:

Using the online form on the Have your say section of the NSW Fair Trading website

Email to: rtreg@finance.nsw.gov.au

Mail to: Residential Tenancies Regulation 2019

Better Regulation Division, Regulatory Policy

McKell Building

2-24 Rawson Place

SYDNEY NSW 2000

The closing date for submissions is close of business 2 August 2019.

Important note: release of submissions

All submissions will be made publicly available. If you do not want your personal details or any part of your submission published, please indicate this clearly in your submission together with reasons. Automatically generated confidentiality statements in emails are not sufficient. You should also be aware that, even if you state that you do not wish certain information to be published, there may be circumstances in which the Government is required by law to release that information (for example, in accordance with the requirements of the *Government Information (Public Access) Act 2009*). It is also a

statutory requirement that all submissions are provided to the Legislation Review Committee of Parliament.

Identified stakeholders

This RIS has been provided directly to some stakeholder organisations. A list of these stakeholders is provided at **Appendix 3.**

Evaluation of submissions

All submissions will be considered and assessed. The proposed Regulation will be amended, if necessary, to address issues identified in the consultation process. If further information is required, targeted consultation will be held before the Regulation is finalised.

Government action

Need for government action

The proposed Regulation is an important component of the regulatory framework for residential tenancies in NSW. The Regulation will be automatically repealed unless it is remade by 1 September 2019 or the repeal is postponed, under the *Subordinate Legislation Act 1989*. In addition, new clauses in the regulation are required to implement the recent changes contained in the Amendment Act. That is, the Act cannot function as intended without the supporting proposed Regulation.

Commencement of the Regulation

After the Minister for Better Regulation and Innovation has finalised the Regulation, it will be submitted to the Governor for approval.

Once approved by the Governor, the Regulation will be published on the official NSW Government website for online publication of legislation at www.legislation.nsw.gov.au and in the NSW Government Gazette. Information on how to access the Gazette is available on the NSW Parliamentary Counsel's website.

It is proposed that both the remaining sections of the Amendment Act (with the exception of the provisions relating to minimum standards) and Regulation will both commence on **2 December 2019.**

Objective and rationale of the Regulation

Objective of government intervention

The objectives of the Act are to:

- define the rights and obligations of landlords and tenants
- balance the interests of landlords and tenants,
- reduce unnecessary costs of compliance, and
- support the future provision of rental housing in NSW.[2]

The primary objective of the proposed Regulation is to provide the legislative support and administrative detail necessary for the effective operation of the Act. The proposed Regulation will also contain provisions to support changes introduced in the Amendment Act.

The proposed Regulation:

1. Improves health and safety protections for tenants by:
    - prescribing the timeframe and manner in which a landlord must perform urgent repairs to non-working smoke alarms,
    - expanding the types of material facts that a landlord or landlord's agent must not knowingly conceal from a prospective tenant to include if the property was the scene of a drug crime in the past 2 years, and
    - prescribing the declaration form by which a 'competent person' under the Act may declare a tenant to be a victim of domestic violence during the currency of the residential tenancy agreement.
2. Clarifies the rights and obligations of both tenants and landlords by:
    - prescribing the kinds of minor alterations for which it would be unreasonable for the landlord to refuse consent,
    - updating the standard form of tenancy agreement and standard form of condition report to reflect new responsibilities under the Amendment Act, and
    - providing guidance on the reasonable timeframes in which a landlord must carry out repairs and maintenance work on the premises.
3. Improves administrative efficiency and fairness by:
    - prescribing penalty notice amounts for offence provisions, and
    - extending the NSW Civil and Administrative Tribunal's (the Tribunal) jurisdiction to cover residential tenancy cases involving amounts of up to $40,000 for either rental bond or non-rental bond matters.

[2] Second Reading Speech, *Residential Tenancies Bill 2010*, 2 June 2010.

Options for achieving objectives

Three options have been considered to assess which is the most suitable for achieving the objectives of the Act:

Option 1 – Maintain the status quo

Do not make the proposed Regulation, and instead remake the Regulation to roll over existing provisions with no changes.

Option 2 – Make the proposed Regulation

The proposed Regulation will support the implementation of the remaining provisions in the Amendment Act and update other provisions in the Regulation to ensure they are current and effective.

Option 3 – Take no action

Allow the Regulation to lapse under the *Subordinate Legislation Act 1989* and do not make any replacement Regulation.

These options have been assessed in respect to the costs and benefits that are incurred for tenants, landlords and their agents, and government. The following analysis will demonstrate that Option 2 provides the highest positive net benefit.

Impact assessment of options

Assessment of option 1

Maintain the status quo – do not make the proposed Regulation and instead remake the current Regulation to be identical to the current Regulation.

Option 1 – Costs

There would be significant opportunity costs on tenants under option 1. The proposed Regulation includes measures that will improve protections for tenants by promoting greater awareness of their rights and enabling them to make the rental property into a genuine home. Tenants would be likely to continue experiencing the same problems that were identified in the statutory review of the Act, such as in relation to disputes between landlords due to the lack of clarity about what comprises a minor alteration to the property or being exposed to danger for longer periods of time if their landlord is not compelled to make urgent repairs to non-working smoke alarms within a set timeframe.

Landlords may not be fully aware of their additional rights and obligations under the Amendment Act. Without the proposed changes to the Regulation, there would be a missed opportunity for landlords to familiarise themselves with the new terms by using the updated standard form of agreement and condition report in the proposed Regulation. There is a real risk that both tenants and landlords will be referring to outdated provisions in the standard form and may unknowingly breach their obligations as changed under the Amendment Act.

There may also be costs for tenants and landlords by not increasing the monetary limit of jurisdiction of the Tribunal. This is because parties would be required to progress any tenancy matters that exceed the limit at a local level court, which is comparatively costly.

Without the exemptions provided for in the proposed Regulation, private social housing providers would be required to make a range of adjustments to meet the requirements under the Amendment Act. This could impose unduly high administrative and compliance costs where such providers generally manage a large number of properties.

Government under option 1 would continue to incur similar administrative and financial costs through its administration of the Act and Regulation. However, some new provisions contained in the Amendment Act will be unable to commence if the Regulation is remade without amendment. The proposed Regulation prescribes the kinds of minor alterations for which it would be unreasonable for a landlord to withhold consent, where the meaning of 'minor alterations' is not clearly defined in the Act. Option 1 would therefore pose an opportunity cost for government to improve an outdated regulatory framework that would provide greater clarity to stakeholders and reduce consumer disputes. Additionally, the government would still incur costs in explaining to stakeholders the legislative changes in the Amendment Act.

For these reasons, the overall cost impact of option 1 has been assessed as **high.**

Option 1 – Benefits

Remaking the Regulation in its current form would partly achieve the objectives of the Act. As many provisions are already familiar to tenants, landlords and government, a number of existing practices and procedures will remain the same, saving time and money. The Regulation would still provide the necessary administrative mechanisms to implement the majority of provisions in the Act. However, it would be unable to support some of the new requirements contained in the Amendment Act.

By not making changes to the Regulation, the benefits for tenants are expected to be low. For instance, tenants are highly likely to experience confusion due to the inconsistencies between the new provisions in the Amendment Act and outdated terms in the standard form of agreement. Additionally, tenants will continue to lack clarity over their rights in respect to the kinds of minor alterations they can make to the premises. This also increases the likelihood of having to resolve matters through the Tribunal at a later stage, which may be time consuming and imposes additional financial costs.

Landlords will benefit from saving costs associated with transitioning to the requirements in the proposed Regulation. However, the provisions in the Amendment Act will still apply and landlords will hence be required to familiarise themselves with any changes.

Under option 1, the government will not be required to provide additional guidance over the regulatory provisions as it would remain unchanged, which could save resources. However, any benefits from not having to update existing regulatory practices and procedures would be outweighed by the costs of having to dispel confusion arising from the lack of detail in the Regulation. For example, landlords will be uncertain of the manner and time period in which they must maintain smoke alarms in the property in accordance with section 64A of the Amendment Act.

The overall benefits of option 1 have been assessed as **low**.

Option 1 – Conclusion

Option 1 would achieve the objectives of the Act in some areas, however, the benefits of this approach would be limited as it would prevent the Amendment Act from being fully implemented. The Regulation in its current form would impose high administrative costs on tenants and landlords from having to understand the changes to the Amendment Act alongside an outdated standard form of agreement and condition report, which are often the first points of reference for parties to obtain information on residential tenancy laws. Therefore**, option 1 is not the preferred option.**

Assessment of option 2

Make the proposed Regulation – revise the regulation and implement changes to the Act and regulation together.

Option 2 – Costs

The proposed Regulation amends some clauses in the current Regulation to align with changes to the Act. Because the proposed Regulation does not introduce new regulatory requirements, the overall cost impact on for tenants, landlords and landlords' agents and government is expected to be low. The proposed Regulation reduces unnecessary compliance costs by ensuring the legislative provisions are clear.

Landlords and landlords' agents would incur costs to comply with the changes in the proposed Regulation. These may include:

- one-off administration costs associated with updating the standard form of agreement and condition report,
- indirect costs in the case that a prospective tenant is deterred from renting the property due to the disclosure of additional material facts,
- costs to maintain and repair smoke alarms in accordance with the prescribed timeframes, and
- costs in the case that a tenant requests multiple minor alterations to the premises.

Landlords and agents would also be required to understand the new requirements and reflect these in their business practices.

The costs for tenants would be limited to familiarising themselves with the new requirements. Tenants may potentially face costs if landlords were to offset the costs associated with carrying out their obligations under the proposed Regulation by adjusting rental rates. However, tenants will still have access to remedies for excessive rent increases under section 44 of the Act.

Government costs will not change significantly under option 2. The government would initially incur administrative costs to educate industry of the changes under the proposed Regulation. However, these costs would be kept to a minimum by aligning the commencement dates of the proposed Regulation and Amendment Act.

Additionally, the increased monetary limit of the Tribunal's jurisdiction to administer residential tenancy disputes may impose further operational costs on the Tribunal to manage a greater number of cases. However, current limits have proven to be too low for some matters, with some applicants reducing their claim amount to stay within the limit of the Tribunal to avoid the higher cost of going to the local court.

Prescribing penalty notice amounts for new provisions in the Act would ease costs and the time associated with enforcing non-compliance through court proceedings, mitigating the cost impact on government.

The overall costs of option 2 have been assessed as **low**.

Option 2 – Benefits

Making the proposed Regulation provides a number of additional benefits that would not be achieved under the alternative options. The proposed Regulation aims to ensure regulatory provisions are aligned with the objectives of the Act by balancing the interests of tenants and landlords.

The benefits for tenants would increase significantly. The proposed Regulation provides a wide range of measures that will improve safety protections for tenants and their rental experience. The following changes have been identified as having likely benefits for tenants under option 2:

- greater understanding of tenant rights through the updated standard form of agreement and condition report,
- protection from unforeseen health and safety risks, through a clearer and more complete list of material facts that a landlord must not knowingly conceal from a prospective tenant,
- ensuring landlords cannot unreasonably refuse a tenant's request to make minor alterations to the property by clarifying the kinds of alterations that would be considered 'minor',
- imposing stricter timeframes in which a landlord must repair and maintain smoke alarms, and
- modernising the Regulation by simplifying clauses to improve clarity and ease of use.

Landlord benefits under option 2 primarily relate to the clarification of obligations. This is likely to reduce the scope for disagreement between parties on matters such as minor alterations and deliver direct cost savings from not having to resolve matters at the Tribunal. The proposed Regulation also retains existing protections for landlords that facilitate unique tenancy arrangements such as refuge or crisis accommodation providers, by exempting them from the operation of the Act.

Government benefits will increase under this option. It is the government's role to ensure that NSW residential tenancy laws remain viable and conducive to the public interest, and the proposed Regulation has been designed to improve the current regulatory framework for residential tenancies. Option 2 is expected to deliver considerable cost savings for government through a reduction in the number of disputes between tenants and landlords that result from greater clarity provided by the proposed Regulation. Prescribing penalty infringement notices for new offences in the Amendment Act and streamlining existing penalty notice amounts will further ensure a consistent and efficient compliance system.

The overall benefits of option 2 have been therefore assessed as **high**.

Option 2 – Conclusion

The proposed Regulation will provide the greatest net benefit to tenants, landlords and government. It will clarify the scope of some of the new and existing provisions so that it meets the intended objectives of the Act. The costs imposed will be mostly offset by the overall social and financial benefits for various stakeholders. In light of these reasons, **option 2 is the preferred option**.

Assessment of option 3

No action – allow the existing Regulation to lapse under the sunset provisions of the *Subordinate Legislation Act 1989* and do not make any replacement Regulation.

Option 3 – Costs

The Act requires that a range of matters be prescribed by regulation. The Regulation provides legislative support to the Act by providing guidance on a range of matters. Without a regulation in place, the Act would not be able to achieve its intended aims, and a number of new provisions in the Amendment Act would not be able to commence.

Tenants would incur considerable costs if the Regulation is allowed to lapse. The consumer protections for tenants contained in the Regulation would no longer be in force. For example, section 26(1) of the Act provides that the regulations may prescribe the kinds of material facts that a landlord must not knowingly conceal from a prospective tenant to induce them into a residential tenancy agreement. This provision would be unworkable without supporting regulations and as a result, landlords may choose to not disclose some material facts that may negatively impact the tenant's choice to rent the premises. This would require tenants to dispute the matter at the Tribunal retrospectively and face unexpected or undesired consequences due to a lack of information that is available to them when deciding to enter the lease.

Landlords would incur several costs under option 3. Landlords will still be required to comply with the provisions in the Act but would face uncertainty as to how and when certain requirements should be complied with, such as for making repairs to smoke alarms under section 64A of the Amendment Act.

Option 3 also removes some of the benefits that landlords currently enjoy. The Regulation establishes exemptions for landlords that operate certain types of housing, for example residential colleges and halls of residence in educational institutions. Allowing the Regulation to lapse means that those landlords would need to make significant adjustments to their current operational systems in order to comply with requirements under the main Act, which may be impractical and costly.

The existing standard form of agreement and condition report would also lapse under this option. This would shift the responsibility to landlords and their agents to prepare these legal documents each time they enter a contract with a new tenant, incurring financial and administrative costs. There is the further risk that the additional costs may be passed on to tenants in the form of higher rent charges.

The costs for government would be high under this option. The number of requests for information and complaints received by NSW Fair Trading would increase significantly with limited guidance and detail that the Regulation would otherwise provide. Additional resources would be required to respond to sector uncertainty. There would also be further matters before the Tribunal with more tenants and landlords likely to experience disputes, which would increase administration costs for government. The absence of prescribed penalty notice offences would also result in administrative and financial costs.

Therefore, the overall costs of option 3 have been assessed as **high**.

Option 3 – Benefits

Option 3 is of little benefit to tenants, landlords and the government as the Regulation is necessary to support the operation of the Act.

Social housing tenants would generate some cost savings from removing the provision relating to charges payable by such tenants to the social housing provider. However, the majority of the tenant population in NSW are likely to experience detriments from the absence of further legislative detail in regard to requirements in the Act, such as specifications regarding the landlord's obligation to disclose certain material facts and additional charges that must be paid by the landlord and not the tenant.

Landlords may experience benefits under this option as this will remove some of their obligations in respect to disclosing information to tenants and the requirement to equip the residential property with prescribed water efficiency water measures to charge tenants for water usage. Simultaneously however, allowing the Regulation to lapse will mean the removal of existing benefits for landlords such as the exemptions provided for particular landlords. Landlords will also face greater uncertainty over how to meet legislative requirements under the Act without a standard form of agreement or condition report in place to guide them.

Government benefits would also be very minor and primarily relate to the cost savings from having to remake the Regulation. However, there will be an increased workload and costs associated with handling more disputes and information requests as detailed above which would counterbalance these benefits.

For these reasons, the overall benefits of option 3 have been assessed as **low**.

Option 3 – Conclusion

Option 3 is likely to result in significant costs for tenants, landlords and the government. This option removes many of the substantive protections for tenants and therefore may result in an imbalance of interests between tenants and landlords. Furthermore, important aspects of the Amendment Act will be unworkable without the Regulation. As such, **option 3 is not the preferred option**.

Summary of costs and benefits for each option

In assessing the above options, the preferred option is **Option 2 – make the proposed Regulation**. This option provides the highest net benefit by enabling the Act to achieve its intended aims. The proposed Regulation modernises the current regulatory framework so that it clearly delineates the rights and obligations of both tenants and landlords and reduces unnecessary compliance costs. The proposed Regulation is also integral to implementing the legislative changes introduced in the Amendment Act.

Option	Likely costs	Likely benefits	Overall benefit
Option 1	High	Low	Negative
Option 2	Low	High	**Positive**
Option 3	High	Low	Negative

Figure 1.0: Summary of costs and benefits for each option

Once made, the proposed Regulation will be subject to a periodic review under the requirements of the *Subordinate Legislation Act 1989* to ensure that its provisions remain appropriate.

Regulation Making Powers

Regulation making powers of the Act (and as amended by the Amendment Act) and the scope of the proposed Regulation

Section of Act	Regulation making power	Proposed Regulation	
		Clause	Scope
3(1) as amended by Amendment Act	Prescribe an Australian Standard dealing with electrical, gas, oil or water metering equipment as part of the definition of 'separately metered'	-	None prescribed
8(1)(d)	Specify the kinds of refuge or crisis accommodation exempt from the Act	20	Agreements under which refuge or crisis accommodation is provided by a prescribed authority, or temporary refuge or crisis accommodation is provided in a caravan park are exempt
12	Exempt from the operation of the Act or Regulations (either in whole or from specified provisions), any specified person, agreement or premises or specified class of persons, agreement or premises	13(1), 19 to 27, 28(1), 29 to 31	Exempts: • Tenants from having to pay access fees for gas (except bottled gas) if the landlord does not supply appliances for which gas is required and the tenant does not use the gas. • NSW LAHC and AHO from using the online rental bond service • Agreements under which refuge or crisis accommodation is provided in certain cases • Equity purchase agreements • Heritage properties if the landlord is the Crown, public authority or a council • Specific leases within St Patrick's Estate Manly • Life tenancies • Residential colleges and halls of residence in education institutions, except where the premises are funded or have applied for funding under the Commonwealth National Rental Affordability Scheme • Landlords and tenants from section 29(1)-(3) if renewing an existing agreement and the parties agree to use an existing condition report

Section of Act	Regulation making power	Proposed Regulation	
		Clause	Scope
			• LAHC, AHO and registered community providers from having to comply with the landlord information statement requirement • Social housing providers from paying gas charges for premises that are not separately metered in certain cases • Social housing tenancy agreements from the limitation on rent increases in certain cases • Residential tenancy agreements from the repair to smoke alarm requirements if the residential premises comprise or include a lot in a strata scheme in certain cases • Social housing providers and social housing tenants from rectification orders
15(1)	Prescribe standard form of residential tenancy agreement	4 & Sch 1	Prescribes the standard form of agreement
15(2)(a)	Prescribe the terms of the standard agreement	4 & Sch 1	As for section 15(1)
15(2)(b)	Prescribe more than one standard form of agreement for different classes of residential premises, agreements or parties	4 & Sch 1	None prescribed
15(2)(c)	Prescribe additional clauses or variations from the standard agreement	4 & Sch 1	None prescribed
15(2)(d)	Prescribe the application of standard terms to pre-existing agreements	4 & Sch 1	
19(1)	Prescribe additional prohibited terms which must not be included in an agreement	5	Prohibits a term requiring tenants to use the services of a specified person or business to carry out the tenant's obligations under the agreement. For example, requiring the tenant to use a particular mowing or gardening service or cleaner
20(2)(e)	Prescribe additional terms or matters which cannot be	6	Prescribes terms relating to the repair of smoke alarms and the liability of a tenant who is in circumstances of domestic

Section of Act	Regulation making power	Proposed Regulation	
		Clause	Scope
	modified or excluded from long term leases		violence or an exempt co-tenant for the actions of others
26(1)	Prescribe "material facts" which a landlord or landlord's agent must not knowingly conceal from a tenant when entering into a lease	8	Prescribes the following matters as material facts: • if the premises has been subject to serious flooding or bushfire in the **last 5 years** • any significant health or safety risks associated with the premises which are not reasonably apparent on inspection • if the premises is listed on the LFAI register • if the premises has been the scene of a serious indictable offence involving violent conduct in the **last 5 years** • if a person has been convicted of a drug offence that took place at the premises in the **last 2 years** • if the landlord has been notified by the council or the NSW Police that the premises has been used to manufacture or cultivate any prohibited drug or prohibited plant in the **last 2 years** • if the tenant will be provided with council waste services on a different basis than is generally applicable within the council area • if the tenant will not be able to obtain a residential parking permit • existence of a driveway or walkway on the premises which others can legally share with the tenant
29(6)	Prescribe the form of condition report	7 & Sch 2	Prescribes the standard form of condition report
32(c)	Prescribe other amounts or fees a tenant may be required to pay for a residential tenancy agreement other than rent or rental bond	9	Prescribes that renewable energy rebates for the supply of electricity that a tenant receives for solar hot water panels may be repaid to the social housing provider
37(2)	Prescribe particulars for rent records	-	None prescribed

Section of Act	Regulation making power	Proposed Regulation	
		Clause	Scope
38(1)(e)	Prescribe other utility charges a tenant must pay for residential premises aside from those listed in the Act	10, 11, 28(2)	Prescribes that: • social housing providers can charge social housing tenants for gas and electricity in a communal kitchen and other facilities and for communal cleaning • social housing tenants in joint venture retirement villages can be charged costs for optional services which they may elect to receive such as emergency callout systems, meals, cleaning or laundry services • social housing tenants must pay gas charges for premises that are not separately metered in certain cases
39(1)(b)	Prescribe water efficiency measures required in the residential premises in order to charge a tenant water usage	12	Prescribes that premises are 'water efficient' if they meet the following standards: • internal cold water taps and single mixer taps with a maximum flow rate of 9 litres per minute • all showerheads have a maximum flow rate of 9 litres per minute, and • no leaking taps at the start of tenancy
40(1)(h)	Prescribe other charges for residential premises payable by landlord	13(2)	Prescribes that a landlord must pay any access fees in relation to gas (except bottled gas) where the premises are separately metered if the premises does not have appliances supplied for which gas is required and the tenant does not use the gas supplied
44(2)	Prescribe a time limit for making excessive rent applications	32(1)	Prescribes that an application for an order must be made within 30 days after notice of the increase is given
62(l)	Expand upon the definition of "urgent repairs"	-	None prescribed
64(3)	Prescribe a maximum amount of reimbursement payable to a tenant for carrying out urgent repairs	-	None prescribed. The Act sets out a $1000 limit
64A(2)(a) and (b) as amended by Amendment Act	Prescribe the manner and time in which a landlord must carry out repairs or maintenance to a smoke alarm	14, 15	Prescribes that a landlord must repair a non-working smoke alarm within 72 hours of being notified that the alarm is not working. For: • a hardwired some alarm, a landlord must engage a qualified professional to repair the alarm except in certain cases

Section of Act	Regulation making power	Proposed Regulation	
		Clause	Scope
			• a battery-operated smoke alarm, in certain cases the battery must be replaced or installed in the period specified in the instructions from the manufacturer of the smoke alarm or annually
64A(3)(a) and (b) as amended by Amendment Act	Prescribe the kinds of repairs to a smoke alarm that a tenant may carry out	16(1)	Prescribes that a tenant, other than a social housing tenant, may replace a battery in a smoke alarm if the smoke alarm is not hardwired and does not have a non-removable or non-replaceable battery
64A(4) as amended by Amendment Act	Prescribe the manner in which a tenant is entitled to reimbursement for repairs to a smoke alarm under 64A(3)	16(2) and (3)	Prescribes that a tenant is entitled to be reimbursed from the landlord within 14 days after the tenant gives the landlord written notice. The written notice must be given as soon as practicable after the repair was carried out. The notice should detail the repair the tenant carried out and the cost of the repair, and include receipts or copies of receipts.
65(6) as amended by Amendment Act	Prescribe guidelines relating to reasonable time for repairs	-	None prescribed
65B(2)(d) as amended by Amendment Act	Prescribe the fee payable with an application for a damage rectification order	-	None prescribed
65C(2)(d) as amended by Amendment Act	Prescribe the fee payable with an application for a repair rectification order	-	None prescribed
66(2A)(a) as amended by Amendment Act	Prescribe the kinds of minor alterations which would be unreasonable for a landlord to withhold consent	17(1), (3) & (4)	Prescribes the following kinds of alterations that are of a minor nature which would be unreasonable for a landlord to withhold consent, except in certain cases: • securing furniture to a wall of premises to ensure safe use of the furniture • fitting a childproof lock to an exterior gate if the premises is a single dwelling

Section of Act	Regulation making power	Proposed Regulation	
		Clause	Scope
			• installing fly screens on windows • installing or replacing an internal window covering • installing child safety gates inside the premises • installing window safety devices for child safety • installing hand-held shower heads or lever-style taps to assist elderly or disabled people • installing or replacing hooks, nails or screws for hanging paintings and other items • installing or replacing a carriage service to connect a phone line or access the internet and any facility or customer equipment associated with the provision of the service • planting vegetables, flowers, herbs or shrubs if the shrubs do not grow more than 2 metres in height and existing vegetation or plants do not need to be removed • installing wireless removeable outdoor security cameras • making a modification that does not penetrate a surface, or permanently modify a surface, fixture or structure of the premises
66(2A)(b) as amended by Amendment Act	Prescribe the circumstances in which giving consent by the landlord to the alteration may be conditional on the work being carried out by an appropriately qualified person	17(2)	Prescribes that the landlord's consent to the following minor alterations may be conditional on being carried out by an appropriately qualified person: • installing hand-held shower heads or lever-style taps to assist elderly or disabled people • installing or replacing a carriage service to connect a phone line or access the internet and any facility or customer equipment associated with the provision of the service
82(1)(d)	Prescribe additional matters to be included in termination notices	-	None prescribed
83(2)(a)	Prescribe a time period for a landlord to apply to the Tribunal for a termination order	32(2)	Prescribes that an application to the Tribunal by the landlord for a termination order must be made within 30 days after the termination date specified in the termination notice

Section of Act	Regulation making power	Proposed Regulation	
		Clause	Scope
98(4)	Prescribe a time period for a landlord to apply to the Tribunal to revoke a tenant's termination notice for a landlord's breach of agreement	32(3)	Prescribes that a landlord must apply to the Tribunal within 7 days after being served with the termination notice
105B(3)	Prescribe a form of declaration made by a competent person	18 & Sch 3	Prescribes the form of declaration
105C(2)(d)	Prescribe matters that a form of declaration must contain	New 18 & Sch 3	Prescribes the matters that must be contained in the form of declaration
107(5)	Prescribe a maximum lease break fee payable by a tenant for fixed-term leases of more than 3 years	-	None prescribed
115(3)	Prescribe a time period for a tenant to apply to the Tribunal for a declaration that a termination notice/termination application was retaliatory	32(4)	Prescribes that a tenant must apply to the Tribunal within: • 30 days after being served with the termination notice under s 85; or • within 14 days in any other case
125(3)	Prescribe a time period for a tenant or a former tenant to apply to a court or Tribunal for an order vesting a tenancy to the applicant against a person with superior title (e.g. mortgagee)	32(5)	Prescribes that an application must be made within 30 days after the applicant was given notice of the proceedings for recovering of possession of premises
126(2)(e)	Expand upon the definition of 'personal document' relating to abandoned goods	-	None prescribed

Section of Act	Regulation making power	Proposed Regulation	
		Clause	Scope
134(3)	Prescribe a time period for a former tenant or a person with interest in goods to apply to the Tribunal for an order relating to goods	32(6)	Prescribes timeframes of 30 days, 3 months and 6 months depending on the particular circumstances
136(e)	Prescribe an organisation or a member of a class of organisations as a 'social housing provider'	-	None prescribed
141(2)	Prescribe a time period for a social housing tenant to apply to the Tribunal for an order that rent is excessive after the cancellation of a rent rebate	32(7)	Prescribes that applications must be made within 30 days after the cancellation of the rent rebate takes effect
162(3)(a)	Extend time period to deposit a rental bond - for landlords	-	None prescribed
162(3)(b)	Extend time period to deposit a rental bond - for a landlord's agent	-	None prescribed
166(1)(e)	Prescribe other amounts a landlord may claim from a rental bond	-	None prescribed
173(1) and (2)	Provide for the payment of interest on rental bond amounts and prescribe the rate and manner of payment of interest on rental bond amounts	34	Prescribes that interest on bonds is to be linked to the rate payable by the Commonwealth Bank on an Everyday Access Account with a balance of $1000
175(3)	Prescribe a time period for applying to the Tribunal for an order relating to the payment of a rental bond	32(8)	Prescribes that an application for an order on the payment of the rental bond is within 6 months after the bond is paid

Section of Act	Regulation making power	Proposed Regulation	
		Clause	Scope
179(3)(b)	Prescribe a person other than an employee of the Department to carry out delegated functions of the Rental Bond Board	-	None prescribed
187(4)(a)	Prescribe a maximum amount payable for a Tribunal order for compensation	33	Prescribes a monetary limit of the Tribunal's jurisdiction as $40,000 if the order is in relation to a bond or $40,000 in any other case. The order must not exceed $80,000 if an order is made in respect to both a rental bond and another matter.
187(4)(b)	Prescribe a maximum amount for a Tribunal order relating to the costs of a performance or work order	-	None prescribed
190(1)	Prescribe a time period for a landlord or tenant to apply to the Tribunal for an order relating to breaches of the agreement	32(9)	Prescribes that applications to the Tribunal must be made within 3 months after becoming aware of the breach
202(3)	Prescribe an alternate maximum penalty amount that the Local Court may impose in proceedings for an offence against the Act	-	None prescribed
203(2)	Prescribe an offence against the Act or the regulations as a penalty notice offence	Sch 4	Prescribes certain penalty notice offences
203(4)	Prescribe a penalty amount payable under a penalty notice offence	Sch 4	Prescribes penalty amounts for penalty notice offences
224(1)	Prescribe a general power to make regulations consistent with the Act in respect to any matter required or permitted	-	None prescribed

Section of Act	Regulation making power	Proposed Regulation	
		Clause	Scope
	to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to Act		
224(2)(a)	Prescribe a standard form or forms of residential tenancy agreement	4(1), Sch 1	See section 15(1), above
224(2)(b)	Prescribe a standard form or forms of condition report	7, Sch 2	See section 29(6), above
224(2)(c)	Prescribe forms for notices under the Act	-	None prescribed
224(2)(d)	Prescribe periods for which records under the Act or Regulations must be kept	-	None prescribed
224(2)(e)	Prescribe times within which applications must be made to Tribunal under the Act or Regulations	32	See above
Sch 2, Part 1, cl(1)	Prescribe additional savings or transitional provisions consequent on the enactment of the Act	-	None prescribed

Discussion of the proposed Regulation

Submissions are welcome on any aspect of the proposed Regulation or any other relevant issue, whether or not raised in this Regulatory Impact Statement.

The following discussion points provide greater context for some provisions in the proposed Regulation and explore some regulatory options for these provisions. A summary of the proposed Regulation is provided at **Appendix 1**.

Part 1 Preliminary

Commencement date of the proposed Regulation (clause 2) and the Amendment Act

The current Regulation was due to be automatically repealed on 1 September 2019, but the repeal has been postponed while the proposed regulation is developed. Once finalised, the proposed Regulation will replace the current Regulation.

The proposed Regulation cannot commence in advance of the Amendment Act. To provide tenants and landlords with sufficient lead time to implement the changes contained in the Amendment Act and proposed Regulation, it is suggested that both the Amendment Act and the proposed Regulation commence on 2 December 2019.

The proposed Regulation does not prescribe a fee for making an application under the new rectification order provisions, as introduced by the Amendment Act. This issue is still being considered and will be resolved before these provisions start. The intention is that no fee will be prescribed. Similarly, the proposed Regulation does not prescribe an Australian Standard dealing with electrical, gas, oil or water metering equipment as part of the definition of 'separately metered', as introduced by the Amendment Act. This issue is still being considered and will be resolved before the new definition starts.

An exception to the 2 December 2019 commencement date is changes to section 52 under the Amendment Act. This provision clarifies the minimum standards by which a residential property would be considered 'fit for habitation'. It is proposed that for this section, landlords should be given an additional six-month period after the reforms commence so that they have sufficient time to make any adjustments to the premises, if necessary.

1. **Is a 2 December 2019 commencement date for the proposed Regulation and Amendment Act appropriate? If not, why?**
2. **Is a mid-2020 date appropriate for commencement of the new minimum standards for rental properties? If not, why?**

Definitions (clause 3)

There are no significant changes to this clause in the proposed Regulation. The definition of "heritage item" in clause 16 of the current Regulation has been moved to clause 3, as there are now additional provisions that refer to this term.

Minor changes have been made to improve readability and consistency.

3. **Are there other terms in the proposed Regulation that should be defined so that their meaning is clear?**

Part 2 Residential tenancy agreements

Standard form of agreement (clause 4 and Schedule 1)

Clause 4 is consistent with the current Regulation, which prescribes a standard form of residential tenancy agreement in Schedule 1. The form has been updated to reflect rights and obligations contained in the Amendment Act and modernises existing provisions in the Regulation to ensure that the requirements remain relevant.

The standard form of agreement creates consistency across the rental market and assists landlords and tenants to better understand their rights and obligations. Schedule 1 of the Regulation provides an updated version of the standard form of agreement, with terms that are consistent with new provisions in the Amendment Act. The proposed Regulation will ensure that both tenants and landlords are aware of these changes before they sign a residential tenancy agreement.

For example, the revised standard form will remind tenants and landlords of the landlord's right to enter the residential property to take photographs or make visual recordings for advertising purposes where the tenant is given reasonable notice and opportunity to remove their possessions from the photo or recording, as per section 55 of the Amendment Act. However, landlords will need to obtain the tenant's written permission if they intend to publish any photos or recordings where the tenant's possessions are visible under section 55A.

As such, the changes to the standard form of agreement will facilitate greater transparency for both tenants and landlords and equip them with relevant information regarding their rights and obligations, that they can easily refer to throughout the duration of the tenancy. While there will be some administrative costs on landlords and landlords' agents to prepare and implement the form for new tenancies, the benefits of improved transparency for both parties would offset any associated costs.

4. Does the new standard form of tenancy agreement clearly define the rights and obligations of both landlords and tenants?

5. Are there other ways that the standard form of tenancy agreement can be improved? If so, how?

Prohibited terms (clause 5)

Clause 5 provides that a residential tenancy agreement must not contain a term that requires tenants to use the services of a specified business or person to carry out their obligations under the agreement. The clause has not changed from the current Regulation and continues to be necessary so that tenants are not limited from seeking out more competitive services.

6. Are there any other terms that should be prohibited from being included in a residential tenancy agreement?

Long-term leases (clause 6 – new)

Section 20(2) of the Act sets out the terms that must not be excluded or modified in a fixed term agreement for a period of 20 years or more. Currently, this applies to certain terms such as establishing the grounds on which a residential tenancy agreement may be terminated and the payment of rates, taxes and charges payable by the landlord.

Clause 6 of the proposed Regulation extends this list to include new terms relating to the repair of smoke alarms, and the liability of a tenant or co-tenant for the actions of others except for a tenant who is the victim of a domestic violence offence, or an exempted co-tenant. It is considered that both these terms should be specified in every residential tenancy agreement regardless of the duration of tenure, as these are directly concerned with ensuring tenants' safety and protecting victims of domestic violence.

The inclusion of these terms in a long-term lease agreement (fixed term of 20 years or more) is not expected to be onerous or costly for landlords. This is because these terms already exist in standard agreements that are not for a fixed term of 20 years or more and the safety benefits outweigh the costs of including these terms.

7. Do you agree that these terms should <u>not</u> be able to be excluded or modified by a fixed term agreement of 20 years or more?

8. Are there other terms in the Act that should <u>not</u> be excluded or modified in fixed term agreements of 20 years or more?

Condition reports (clause 7 and Schedule 2)

The exchange of condition reports describing the condition of the property is a requirement of every residential tenancy agreement under section 29 of the Act. Condition reports are important records that

can be used as evidence in the case that a landlord and tenant have conflicting views over whether the tenant has damaged the property during their tenancy.

Clause 7 is consistent with the current Regulation, which prescribes a condition report in the form set out in Schedule 2. The form has been updated to reflect rights and obligations contained in the Amendment Act and modernises existing provisions in the Regulation to ensure that the requirements remain relevant.

Schedule 2 of the proposed Regulation includes a modernised condition report so that its contents are consistent with provisions in the Amendment Act. Changes include:

- requiring landlords or landlords' agents to provide either two copies, or one electronic copy, of the completed and signed condition report to the tenant, before or when the tenant signs the agreement (section 29(2)),
- requiring tenants to complete and provide a copy of the condition report to their landlord or landlord's agent no later than 7 days after occupying the residential property (section 29(3)), and
- introducing a section to indicate whether the property meets minimum standards (section 52(1A)) and smoke alarm requirements (section 64A).

The updated report will make it clearer that 'fair wear and tear' to the property may cover anything that occurs through ordinary use of the premises, excluding intentional damage or damage caused by negligence.

The condition report also reminds landlords and tenants that photos or recordings are not a substitute for written descriptions and that it should be signed and dated by all parties.

It is important to note that the new provisions in the condition report on minimum standards will not commence until the minimum standards provisions in the Amendment Act (section 52(1A) to (1C)) commence. It is proposed that the minimum standards provisions will commence in mid-2020, to allow reasonable time for landlords to make any necessary adjustments.

9. Do you think that the proposed condition report is easy to use?

10. Should any other features be included in the condition report to help accurately describe the condition of the premises?

Part 3 Rights and obligations of landlords and tenants

Disclosure of material facts to tenants (clause 8)

Section 26(1) of the Act provides that the regulations may prescribe the types of material facts that a landlord or landlord's agent must not knowingly conceal from a prospective tenant to induce them into a residential tenancy agreement.

Sections 98A and 103A of the Amendment Act reinforce the responsibility of landlords to disclose material facts to a prospective tenant. Under these sections, a tenant may give a 14-day termination notice or apply to the Tribunal for a termination order if a landlord fails to disclose a material fact. The Tribunal may order the landlord to compensate a tenant for any costs the tenant incurs because of the termination.

Drug offences and drug manufacturing

Clause 8(e) of the proposed Regulation expands the current list of material facts to include the fact that a person has been convicted of an offence under the *Drug Misuse and Trafficking Act 1985* which occurred at the property within the last 2 years. Drug offences include, but are not limited to:

- the possession of prohibited drugs,
- possession of equipment for the use of prohibited drugs,
- self-administration of prohibited drugs,
- permitting others to administer prohibited drugs, and
- obtaining prohibited drugs by false representation.

In addition, clause 8(f) specifies that a material fact includes where the NSW Police Force or the local council has notified the landlord that the property has been used to manufacture or cultivate any prohibited drug or prohibited plant within the last 2 years

These proposed amendments implement Recommendation 3 of the statutory review of the Act.

Properties that have been the scene of a drug offence may carry health risks for the tenant if a property that has been used for drug manufacturing or storage has not been properly cleaned of toxic chemical residue. A 2016 study found that exposure to substance contamination inside homes may potentially result in a range of adverse health effects including acute skin burns, respiratory and eye problems, disturbance to sleep and signs of withdrawal.[3] Properties that have been used to manufacture or store prohibited drugs or plants therefore present a significant risk to tenants where the property is not properly cleaned.

Western Australia imposes a mandatory requirement on landlords' agents to disclose certain material facts to a prospective tenant.[4] Consumer Protection Western Australia considers that landlords must disclose serious health hazards, such as if the residential property contains harmful residue as a result of the property being used as a drug laboratory[5]. Similarly, the New Zealand Parliament introduced a Bill[6] that would prevent landlords from providing a property to a tenant if the landlord knows that it is

[3] Wright, J (2016) *Exposure and risk associated with clandestine amphetamine-type stimulant drug laboratories*, Flinders University, p.195-196.
[4] Real Estate and Business Agents and Sales Representatives Code of Conduct 2016 (the Code), prescribed under the *Real Estate and Business Agents Act 1978* (Western Australia).
[5] Western Australia, Department of Mines, Industry Regulation and Safety, *Illicit drug laboratories*, https://www.commerce.wa.gov.au/consumer-protection/illicit-drug-laboratories
[6] New Zealand, *Residential Tenancies Amendment Bill (No 2) 2018: Digest 2549.*

contaminated with substances based on tests carried out in accordance with regulations, and that the property has not been properly decontaminated.

Section 26(1) of the Act only requires the landlord to not *knowingly* conceal a material fact. Therefore, the prohibition would only apply if the landlord or agent knows that a drug offence has taken place at the property or the property has been used for the manufacture or cultivation of a prohibited drug within the last 2 years. Properties that have been used as drug laboratories are already legally required to be cleaned and decontaminated by experts, to the satisfaction of an Environmental Health Officer of the relevant local council.

Landlords may lose some time and possible income in trying to secure a tenant who is willing to rent the property knowing these facts. However, this is outweighed by the benefit of the tenant being fully informed of health and safety risks. The likely cost impact is limited because the disclosure is only required if the conviction or manufacturing of illicit drugs took place at the property within the last 2 years.

Serious indictable offence involving violent conduct

The term "serious violent crime" in clause 7 of the current Regulation has been changed to "serious indictable offence involving violent conduct". An indictable offence refers to an offence that is punishable by imprisonment for life or for a term of 5 years or more. The new terminology in the proposed Regulation is less ambiguous, making it easier for landlords to comply with this requirement.

11. For the material fact listed under clause 8(f), are there other ways that a landlord could become aware that the property has been used to manufacture drugs?
12. Are the prescribed timeframes for disclosing each of the material facts listed under clause 8, appropriate? If not, why?
13. Are the proposed material facts listed under clause 8 too broad or too narrow? If yes, why?
14. Are there other types of material facts that a landlord or landlord's agent should disclose to a prospective tenant?

Charges payable by social housing tenants (clause 9, 10 & 11)

Under section 32(c) of the Act, a tenant may be required to pay the landlord any other amounts or fees prescribed by the regulations. In addition, section 38(1)(e) of the Act requires the tenant to pay certain utility charges that are listed in the Regulation.

The requirements of clauses 9, 10 and 11 in the proposed Regulation are consistent with the current Regulation but have been simplified so that the meaning of those provisions is clear and to facilitate ease of use. There are no cost impacts for tenants or landlords as a result of this change since the requirements remain the same.

Clause 9 specifies that a tenant under a social housing tenancy agreement is to pay the landlord an amount equal to the renewable energy rebate the tenant may receive for the supply of electricity because of solar hot water panels.

Clause 10 prescribes that social housing tenants who use a communal kitchen or other shared facilities under their tenancy agreement must pay the landlord reasonable charges for using electricity and gas in and for cleaning a communal kitchen or other communal facilities.

Clause 11 relates to joint venture retirement villages which contain a mix of social housing tenants and retirement village residents. For social housing tenants where the landlord is the Aboriginal Housing Office or the NSW Land and Housing Corporation, the residential tenancy laws will apply instead of the *Retirement Villages Act 1999*. Despite this, these social housing tenants can still elect to receive optional services provided within the retirement village. This clause provides that social housing tenants can be charged for optional services they agree are to be provided by the retirement village operator.

15. Are clauses 9, 10 and 11 still appropriate? If so, why?

16. Are there any other charges that should apply to social housing tenants?

Water efficiency measures required for usage charge payment by tenants (clause 12)

Under section 39 of the Act, the residential property must meet water efficiency standards and also be separately metered for a landlord to pass on water usage charges to a tenant. Clause 11 of the current Regulation prescribes the required water efficiency measures dealing with shower heads and taps. Prescribing water efficiency measures encourage the uptake of water efficiency in rented properties, and protects tenants from being charged excessive water charges due to inefficient properties. No change has been made to this clause in the proposed Regulation.

According to the Australian Department of the Environment and Energy, more water-efficient products could save Australians households an average of $175 per household each year[7]. Washing machines, showers, taps and toilets use up the most water in homes. The Water Efficiency Labelling and Standards (WELS) scheme helps compare the water efficiency rating for a range of appliances and fittings.

17. Are there other water efficiency measures that should be prescribed? If so, why?

Additional charges payable by landlord (clause 13)

Section 38(1)(a) of the Act provides that a tenant must pay all charges for the supply of gas (except bottled gas) if the property is separately metered.

Clause 12 of the current Regulation provides that a landlord must pay any charges for the availability of a gas supply to the property if the landlord does not supply gas appliances and the tenant does not use any gas.

[7] Commonwealth Department of the Environment and Energy, *Water efficiency*, www.energy.gov.au.

Clause 12 of the current Regulation was originally introduced to ensure that tenants are not paying for gas services they do not use. For instance, there are situations where some tenants rent a property which has an existing gas supply that is for heating only, but there is no gas heater in the property and the tenant does not use the gas. Under section 38(1)(a) of the Act, the tenant would still be required to pay charges for supply of gas.

Clause 12 has been redrafted to clarify that a tenant is only exempt from having to pay access fees for gas that would otherwise be payable under section 38(1)(a), if the landlord does not supply any gas appliances and the tenant does not use gas. Clause 13(2) reassigns payment of these fees to the landlord.

18. Is the newly drafted clause 13 appropriate? If not, why?

Repair and maintenance of smoke alarms (clause 14, 15 & 16 – new)

The NSW Government has identified the need to strengthen regulatory requirements relating to the maintenance and repair of smoke alarms due to the lack of clarity regarding both landlords' and tenants' responsibilities.

Currently, landlords must comply with any statutory obligations relating to the health or safety of the property, which is a term of every residential tenancy agreement. Statutory obligations include the installation of smoke alarms under the *Environmental Planning and Assessment Act 1979* (the EPA Act). In addition, the *Environmental Planning and Assessment Regulation 2000* requires that a person must not remove or interfere with the operation of a smoke alarm unless there is a reasonable excuse to do so. The current standard form of agreement prescribes a term that the landlord must meet their obligations in relation to the smoke alarm requirements under the EPA Act. However, the Act or Regulation does not currently deal with the repair of smoke alarms.

The NSW Coronial Inquest into the death of Miata Jibba, which investigated her death from an accidental house fire, found that the tragedy could have been prevented if smoke alarms were properly fitted in the property. In this case, the landlord's agent had overlooked the need to repair a non-functioning smoke alarm which included replacing the battery.

Section 64A(2) of the Amendment Act provides that a landlord must carry out repairs to a smoke alarm in the manner and within the time period prescribed by the Regulation. The Amendment Act also allows the Regulation to prescribe any repairs that may be undertaken by a tenant and how a tenant may be reimbursed for doing this.

Clause 15 of the proposed Regulation clarifies that a landlord must repair a non-working smoke alarm within 72 hours of being notified that the alarm is not working. The timeframe is intended to balance the urgency of the repair request from the tenant with the landlord's requirement to give at least 2 days' notice to the tenant to access the property before conducting the repairs.

Clause 15 also prescribes how often a landlord must install or replace a battery in a smoke alarm, other than a non-removable or non-replaceable battery. The timeframes are either:

in the period specified by the manufacturer of the smoke alarm in the instructions supplied with the smoke alarm – for a lithium battery that can be removed or replaced, or

annually – for any other removable or replaceable battery.

These timeframes are intended to balance the need to provide flexibility for the various types of smoke alarms and the Coroner's recommendation to require landlords to replace batteries in smoke alarms at either the commencement of each new agreement or at a minimum annually.

Specifying the time in which a landlord must repair and maintain smoke alarms will ensure that tenants can rely on their smoke alarms to function properly. This is expected to minimise the possibility of fire-related fatalities in residential households. Fire and Rescue NSW estimate that the risk of a fatality in a home fire is halved if there is a working smoke alarm in a residential dwelling.[8]

Clause 14 clarifies that a landlord must engage a qualified professional to carry out repairs to a hardwired smoke alarm, unless the repair involves installing or replacing a battery where the smoke alarm manufacturer's instructions, supplied with the smoke alarm, do not recommend that the battery is installed or replaced by a qualified professional. Requiring a qualified professional to replace the battery in a hardwired smoke alarm may create an unnecessary burden on landlords, especially where the manufacturer of the smoke alarm recommends that the battery can be changed by the user.

Clause 16(1) will enable tenants (except social housing tenants) to choose whether to replace the battery in a smoke alarm themselves. This can only be done if the smoke alarm is not hardwired or has a removable or replaceable battery. Social housing tenants cannot replace the batteries because social housing properties already have systems in place to carry out repairs to smoke alarms. The revised standard form of agreement prompts the tenant to notify the landlord if repairs to a smoke alarm are required, unless the tenant replaces the battery in accordance with clause 16.

Clause 16(2) provides that a tenant who carries out a repair to a smoke alarm under clause 16(1) is entitled to be reimbursed by the landlord for the repair costs within 14 days after the tenant gives the landlord written notice. The written notice must be given to the landlord or the landlord's agent as soon as practicable after the tenant carries out the repair. The notice should set out details of the repair the tenant carried out and the repair costs, and be accompanied by receipts or copies of receipts.

Where the tenant chooses not to replace the battery, the landlord remains responsible for repairing a smoke alarm.

In developing these provisions, consideration has been given to the complexity of handling smoke alarm systems without damaging their functionality. Mandating such requirements in legislation with

[8] Fire and Rescue NSW, Smoke alarms, https://www.fire.nsw.gov.au/page.php?id=80

corresponding penalties will incentivise landlords and landlords' agents to maintain and repair smoke alarms in rented properties.

19. Do the requirements appropriately balance tenant safety and administrative costs to landlords and agents? If not, why?

20. Are there other circumstances where repairs to a smoke alarm should be carried out by a qualified professional? If so, why?

21. Are any of the smoke alarm repair requirements unclear? If so, why?

22. How much notice should a tenant give a landlord to carry out repairs to a smoke alarm, given the need to repair it urgently?

Alterations of a minor nature (clause 17 – new)

Section 66(2) of the Act provides that a landlord must not unreasonably refuse consent to a fixture, alteration, addition or renovation that is of a minor nature. The Act does not define 'minor'. However, section 68(3) sets out some circumstances where the Tribunal may consider it reasonable for a landlord to withhold consent, including work that:

- involves structural changes,
- would not be reasonably capable of rectification, repair or removal,
- involves internal or external painting of the property,
- is prohibited under any other law,
- is not consistent with the nature of the property (such as installing a modern fixture in a heritage listed property).

In 2017-18, there were 314 cases brought to the Tribunal that involved disputes between tenants and landlords over minor alterations to a rented property. A 2018 CHOICE report on the consumer experience of renting found that 23% of all Australians who rent had experienced restrictions on how they want to use their home, including making minor alterations[9].

To give greater clarity to tenants and landlords, the Amendment Act provides that the Regulation may set out the kinds of minor alterations for which it would be unreasonable for a landlord to withhold consent, and the circumstances in which the landlord's consent may be conditional on the alteration being carried out by an appropriately qualified person. Tenants are still required to obtain the landlord's consent before making an alteration to the premises.

Clause 17 of the proposed Regulation prescribes types of minor alterations for which it would be unreasonable for a landlord to withhold consent. The list of minor alterations has been developed to

[9] CHOICE, National Shelter & The National Association of Tenant Organisations, (2018) *Disrupted: The consumer experience of renting in Australia*.

improve safety, accessibility for elderly and disabled tenants and to improve the tenant's rental experience. These are listed below.

Prescribed alteration	Landlord's consent conditional on the alteration being carried out by a qualified tradesperson
Secure furniture to the wall of property if necessary for the safe use of the furniture	×
Fit a childproof lock to an exterior gate if the property is a single dwelling	×
Install fly screens on windows	×
Install or replace an internal window covering	×
Install child safety gates inside the premises	×
Install window safety devices for child safety	×
Install hand-held shower heads or lever-style taps to assist elderly or disabled people	✓
Install or replace hooks, nails or screws for hanging paintings and other items	×
Install a carriage service for connecting a phone line or accessing the internet and any facility or customer equipment associated with the provision of the service	✓
Plant vegetables, flowers, herbs or shrubs if: a) any shrubs planted will not grow more than 2 metres in height, and b) existing vegetation or plants do not need to be removed.	×
Install wireless removable outdoor security cameras	×
A modification that does not penetrate a surface, or permanently modify a surface, fixture or the structure of the premises	×

Safety

A number of the prescribed alterations have been included to ensure tenants are not unduly prevented from mitigating safety risks in the property. For instance, this clause proposes that securing furniture to walls is a minor alteration if it is necessary for safety reasons.

In June 2018, the Australian Competition and Consumer Commission found that approximately 2,600 Australians receive hospital treatment for injuries caused by toppling furniture and televisions each year.

The proposed change is intended to protect tenants and especially younger children by ensuring that the landlord cannot unreasonably refuse alterations that are intended to make the property safe.

Under section 66(4) of the Act, these alterations are at a cost to the tenant unless the landlord otherwise agrees. It is therefore expected that the proposed Regulation would impose minimal costs on landlords while ensuring tenant safety.

Accessibility

The proposed Regulation recognises the additional challenges for elderly tenants and tenants with a disability by prescribing that hand-held shower heads or lever-style taps are minor alterations. These changes are consistent with Recommendation 15 of the statutory review report. The needs of tenants may evolve over time and some homes in their current form may not be suitable for tenants who experience difficulty in accessing parts of the home due to disability or age.

The proposed Regulation introduces a condition that these types of alterations installations must be carried out by a qualified tradesperson. This approach recognises that there may be a risk of potentially tampering with waterproofing or plumbing systems if a non-qualified person was to install these alterations.

Improving the rental experience

To improve the rental experience, the proposed Regulation prescribes alterations such as installing or replacing hooks, nails or screws for hanging pictures and other items. Landlords may have concerns regarding how these alterations could impact the overall aesthetic appeal of their property and potentially cause damage when they are removed at the end of the tenancy. However, given that 6 in 10 tenants in Australia are now renting for longer[10], it is also important that tenants are able to make their rental property into a genuine home.

The proposed list of alterations aims to balance this need by ensuring that the alteration does not substantively change the property and can be repaired. To avoid inconsistency with section 68(3) of the Act, the proposed Regulation does not include alterations such as painting the property or the laying of carpet.

The tenant will continue to be responsible for leaving the property in as nearly as possible in the same condition under section 51(3)(b) of the Act and landlords may seek remedies for rectifying alterations under section 69.

Clause 17 will benefit tenants and landlords as it clarifies what would otherwise be an uncertain area of the law. This would also reduce the need for landlords and tenants to seek determination of such matters through a potentially time-consuming Tribunal process.

[10] CHOICE, National Shelter & The National Association of Tenant Organisations, (2018) *Disrupted: The consumer experience of renting in Australia*.

Exceptions

Clause 17 of the proposed Regulation will not apply to residential properties in certain cases where it is considered to be inappropriate. For example, landlords that own properties that comprise or include a lot in a strata scheme could reasonably refuse the minor alterations listed above, if:

- the alteration affects common property, other than a prescribed alteration that is of a 'cosmetic' nature[11], or
- would contravene the by-laws made for that strata scheme.

This exception is considered appropriate given the shared nature of common property and because by-laws are established rules agreed to among multiple owners on how they will maintain the scheme.

The proposed clause also does not apply to heritage listed property or properties on the Loose-Fill Asbestos Insulation Register (LFAI) due to safety risks and so as not to conflict with other legislation.

Other measures

The statutory review report additionally recommended other measures to accommodate elderly or disabled tenants could be further considered. This could include grab rails in bathrooms or the addition of an access ramp where this does not cause structural damage, or the damage would not be easily rectified.

23. Do you agree that the prescribed list of minor alterations is reasonable? If not, why?
24. Do you agree with the list of alterations where consent may be conditional on having the work carried out by a qualified tradesperson? If not, why?
25. Are there other types of minor alterations that should be prescribed, including measures to further improve accessibility for elderly or disabled tenants?
26. Do you agree with the list of exceptions? If not, why?
27. Are there any other situations where clause 17 should not apply?

Domestic violence declaration form (clause 18 and Schedule 3)

This clause was introduced on the 28 February 2019, when the Regulation was amended to implement reforms to assist victims of domestic violence.

Section 105B of the Act allows a tenant to end their tenancy immediately, without penalty, if the tenant or their dependent child is in circumstances of domestic violence. To end the tenancy under this section, a tenant needs to give a domestic violence termination notice to the landlord and to each co-tenant. The tenant must also attach one of the four permitted forms of evidence to the termination notice given to the landlord.

[11] 'Cosmetic work' is defined under section 109 of the *Strata Schemes Management Act 2015*.

A declaration made by a competent person is one of the permitted forms of evidence and is prescribed in the Regulation. Minor amendments have been made to the prescribed declaration form based on feedback from stakeholders. However, these amendments simply mirror the declaration form that is already available on the NSW Fair Trading website.

28. Do you have any suggestions on how the wording and layout of the declaration form could be improved?

Part 4 Exemptions

The main objective of Part 4 of the proposed Regulation is to provide exemptions from the tenancy laws for certain properties or agreements where it is either unnecessary or inappropriate for the tenancy laws to apply.

Exemption from using the online rental bond service (clause 19)

Section 159(1A) of the Act prohibits any landlord, landlord's agent or other person from requiring or receiving a rental bond from a tenant unless they are registered as a user of the online rental bond service and have provided the tenant with the opportunity to use that service. Clause 19 exempts the NSW Land and Housing Corporation and the Aboriginal Housing Office from these requirements. No change has been made to this provision in the proposed Regulation.

Refuge or crisis accommodation (clause 20)

Clause 20 exempts an agreement where a person resides in refuge or crisis accommodation provided by a prescribed authority from the operation of the Act.

The exemption extends to a person residing in a moveable dwelling in a caravan park where certain criteria are met, including that a written referral has been made by a prescribed authority to the caravan park owner or operator and the referral specifies that the accommodation is needed as temporary refuge or crisis accommodation. This is under clause 20(2) to (4).

Despite the exemption provided by this clause, the parties to the agreement can agree for the exemption not to apply.

Minor wording changes have been made to the clause clarify the meaning of these provisions. There are no additional costs as a result of this change.

Equity purchase agreements (clause 21)

Clause 21 exempts residential tenancy agreements that form part of an equity purchase agreement from the operation of the Act. It also defines what constitutes an equity purchase agreement. No change has been made to this clause.

Heritage properties (clause 22)

Clause 22(1) exempts residential premises from the operation of the Act if they are a part of a heritage item and the landlord is the Crown, public authority or a council (other than the NSW Land and Housing Corporation or the Aboriginal Housing Office). Clause 22(2) provides that parties to the agreement that covers the residential property can agree in writing that the exemption does not apply.

The definition of heritage item that was contained in this clause has been moved to the definitions in clause 3, as the term is applied across several clauses in the proposed Regulation. However, this provision remains consistent with the current Regulation.

St Patrick's Estate, Manly (clause 23)

Clause 23 exempts certain long-term residential tenancy agreements concerning St Patrick's Estate land at Manly that is owned by the Trustees of the Roman Catholic Church for the Archdiocese of Sydney. The exemption is linked to certain land held by the Trustees of the Roman Catholic Church for the Archdiocese of Sydney. To be exempt the agreement must also meet certain criteria.

The exemption under clause 17 of the current Regulation was originally granted in 2000. The Trustees of the Roman Catholic Church enter into long-term leases (usually a term of 82 years with a 17 year option) with tenants. The nature of the leasehold arrangement with tenants of St Patrick's Estate is such that the provisions of the Act and Regulation were not suitable.

This clause has been simplified by removing a redundant clause applying to agreements exempted from the operation of the 1987 Act before it was repealed. In addition, the clause no longer prescribes the parcels of land held by the Trustees of the Roman Catholic Church for the Archdiocese of Sydney. Instead, the exemption is linked to the parcels of land identified in the repealed *Residential Tenancies (Residential Premises) Regulation 1995*, being the earliest case of when the parcels of land were prescribed. This avoids the need to regularly update references to the parcels of land to which the exemption applies. The overall provision remains consistent with the current Regulation.

Life tenancies (Clause 24)

Clause 24 exempts residential properties that are subject to a life tenancy from the operation of the Act, but not where the property is occupied by the sub-tenant of a life tenant. It also defines life tenancy to mean a person's legal or equitable right to occupy residential property as a tenant for life. The provisions of the Act are not suitable for these tenancies.

No change has been made to this clause in the proposed Regulation.

Residential colleges and halls of residence in educational institutions (clause 25)

Clause 25(1) exempts properties that are principally used or intended to be used as residential colleges or halls of residence for students of educational institutions. For the exemption to apply, the properties must be located within an educational institution, or owned by the institution, or provided by another party under a written agreement with the institution to provide students of the institution with

accommodation. These forms of accommodation are subject to their own governance arrangements and are available only to students of the institutions.

The exemption does not apply to a part of the property if the landlord and tenant agree to this in writing. Further, the exemption does not apply if the landlord has applied for or has been provided with an allocation under the National Rental Affordability Scheme, unless the application is withdrawn or is unsuccessful.

This clause has been simplified but is consistent with the current Regulation.

Condition reports from preceding agreement may be used again (clause 26)

Section 29(1) of the Act requires condition reports for residential properties to be completed by or on behalf of a landlord before or at the same time as the tenancy agreement is given to the tenant for signing. Changes to section 29 of the Act by the Amendment Act, will require the landlord to give two hard copies or one electronic copy of the completed condition report to the tenant. Furthermore, tenants will be required to complete and return the condition report within 7 days of taking possession of the property (instead of from when they receive it) but only if they received the condition report.

Clause 26 of the proposed Regulation exempts a landlord and tenant from having to comply with the requirements of section 29(1) to (3):

- where a new residential tenancy agreement is for residential properties already occupied by the tenant under a previous agreement, and
- the condition report from the previous residential tenancy agreement applies to the new agreement.

This will ensure that there is minimal regulatory burden on tenants and landlords to redo the condition report where the previous condition report can be used for a renewed agreement with the same tenant.

29. Should the exemptions provided for in clauses 19-26 continue to apply? If not, why?

Exemption for particular providers from landlord's information statement (clause 27 - new)

Section 31A of the Amendment Act will require a landlord, or their agent, to sign an acknowledgment that the landlord has read and understood an information statement about landlords' rights and responsibilities, before the landlord enters into a residential tenancy agreement. Clause 27 of the proposed Regulation exempts NSW Land and Housing Corporation, the Aboriginal Housing Office and registered community housing providers from the requirements of section 31A. These organisations manage large property portfolios of social and affordable housing properties. For example, the NSW Land and Housing Corporation is the landlord for approximately 126,000 properties.

Requiring these organisations to sign an acknowledgement in accordance with section 31A every time they enter into a residential tenancy agreement would impose a large administrative burden.

The exemption would limit this administrative burden so that these providers can focus their resources on supporting vulnerable tenants.

30. Is the new exemption provided by clause 27 appropriate? If not, why?

Social housing tenancy agreements and separately metered gas (clause 28 - new)

Section 38(1)(a) of the Act provides that a tenant must pay certain charges for the residential property, including all gas (except bottled gas) supply charges, if the property is separately metered. If the property is not separately metered, a landlord must pay these charges. A definition of 'separately metered' is introduced in section 3 of the Amendment Act.

Centralised hot water systems are common in apartments and multi-dwelling residential buildings. These systems eliminate the need for an individual hot water system in each lot, as the only equipment required for each individual lot is a hot water meter.

In a centralised hot water system, there is one master meter that measures gas that is used to heat the water in the centralised system. The heated water is then supplied to each lot. Each lot has an individual hot water meter which measures the amount of hot water used from the centralised system.

Under this system, a tenant cannot be charged for the supply of gas in accordance with section 38(1)(a) as the meter does not measure the gas supplied to the lot, but only the hot water supplied. As the supply of gas is not 'separately metered', the landlord is liable to pay for gas charges in these situations.

Many social housing properties have a centralised hot water system and it has been their practice to indirectly measure the amount of gas used in a lot, by measuring the quantity of hot water used by the lot and calculating the quantity of gas that would have been used to heat this quantity of hot water. If section 38(1) is interpreted so as to disallow this practice, this will have a significant cost impact on social housing providers. Clause 28(1) therefore provides an exemption from the landlord's obligation to pay all gas charges in social housing premises that use a centralised hot water heater system to calculate gas charges for tenants. Clause 28(2) reassigns payment of these charges to the social housing tenant at the residential premises where the exemption under clause 28(1) applies.

This exemption will apply to new agreements entered into after the changes start.

31. Is the new exemption provided by clauses 28 appropriate? If not, why?

Social housing tenancy agreements and rent increases (clause 29 - new)

Section 41(1B) of the Amendment Act provides that rent under a periodic agreement may not be increased more than once in a 12-month period. Clause 29 of the proposed Regulation exempts social housing tenancy agreements from this provision, if the tenant is receiving a rental rebate in accordance with Part 7 of the *Housing Act 2001*.

Social housing tenants on low or moderate incomes can apply for a rental rebate, which reduces the rent they must pay. These rental rebates can be updated more than once a year based on changes in tenants' circumstances, such as increases in tenants' assessable income. The exemption provided by clause 29 will ensure that rent for these tenants can continue to be adjusted in line with the changing circumstances of individual tenants.

32. Is the new exemption provided by clause 29 appropriate? If not, why?

Strata scheme (clause 30 - new)

Section 64A of the Amendment Act sets out provisions about repairs to smoke alarms, including that repairs to smoke alarms must be carried out by a landlord except where the Regulations allow otherwise. In particular, section 64A(2) provides that the regulations may prescribe the manner and time period in which a landlord must carry out repairs to a smoke alarm. The regulations may also specify the types of smoke alarms that a tenant can repair, and the kinds of repairs a tenant can carry out under section 64A(3). These requirements are prescribed at clauses 14-16 of the proposed Regulation.

Clause 30 of the proposed Regulation provides that section 64A does not apply to a residential tenancy agreement if:

- the agreement relates to property that comprises or includes a lot in a strata scheme under the *Strata Schemes Management Act 2015* (the SSM Act), and
- the landlord has advised the tenant in writing that the owners corporation of the strata scheme is responsible for the repair and maintenance of smoke alarms in the residential property.

The exemption under clause 30 ensures the obligations in section 64A of the Amendment Act do not duplicate, or conflict with, the existing rules and obligations relating to fire safety and maintenance of smoke alarms that may apply to a lot in a strata scheme.

The proposed standard form of agreement supports these changes.

33. Is the new exemption provided by clause 30 appropriate? If not, why?

Social housing tenancy agreements and rectification orders (clause 31 - new)

Division 5A of Part 3 of the Amendment Act sets out:

- the Secretary's power to investigate tenants' and landlords' breaches of residential tenancy agreements involving damage to the property and/or failing to repair/maintain the property appropriately
- the Secretary's power to issue rectification orders
- the rights of landlords and tenants to apply to the Tribunal about these breaches.

Clause 31 of the proposed Regulation exempts the landlord and tenant of a social housing property from the operation of Division 5A of Part 3.

Social housing providers have existing processes for dealing with disputes about repairs and damage. NSW Fair Trading does not intervene in public or social housing disputes, which are generally handled by the Department of Family and Community Services and Justice (FCSJ) and the Tribunal. Therefore, social housing tenancies will not be subject to this new process.

34. Is the exemption provided by clause 31 appropriate? If not, why?

Part 5 Enforcement

Times for making applications to the Tribunal (clause 32)

The provisions in clause 32 remain identical to clause 22 of the current Regulation, which prescribes the time period for making applications to the Tribunal for residential tenancy matters. However, minor changes have been made to simplify the wording of the clause. Refer to **Appendix 4** which outlines the timeframes for making an application to the Tribunal.

35. Are the timeframes for making applications to the Tribunal appropriate? If not, why?

Monetary limit of jurisdiction of Tribunal (clause 33)

Section 187(4)(a) of the Act provides that the Regulation may set a monetary limit for orders made by the Tribunal which requires payment by a landlord, tenant or other person in relation to residential tenancy proceedings. Currently the limit is set at $30,000 for rental bond matters and $15,000 for other matters.

The Tribunal does not have the jurisdiction to make an order for matters that exceed the respective monetary limits. In these cases, the matter would need to be taken to a local court, which is more costly for applicants. The low limit has also caused confusion among some consumers who are required to attend a local court for some tenancy matters and the Tribunal for others.

Therefore, the proposed Regulation increases the Tribunal's jurisdictional limit for both matters to $40,000. It also clarifies that if an order is made with respect to both matters, the order must not exceed $80,000.

Increasing the monetary limit for the jurisdiction of the Tribunal seeks to benefit both landlords and tenants by streamlining the procedure and costs of resolving residential tenancy claims. The Tribunal is also better positioned to administer matters that fall under the Act, given its specialist experience in dealing with residential tenancy disputes.

36. Is the jurisdictional limit set for rental bond and other matters adequate? If not, why?
37. Are there any unintended consequences in prescribing a cumulative amount where an order is made with respect to both a rental bond and another matter?

Part 6 Miscellaneous

Interest payable on rental bonds (clause 34)

Section 173 of the Act provides that the Secretary must pay interest on rental bonds, where the Regulation provides for the payment of interest. Further, the Regulation may prescribe the rate and manner of payment of such interest.

Clause 34 of the proposed Regulation prescribes the rate of interest payable on a rental bond as the rate payable by the Commonwealth Bank of Australia on an Everyday Access Account balance of $1000 as the last day of the month the interest is being calculated. The interest rate on this account is usually very low and is currently set to 0%.

This provision remains unchanged from the current Regulation.

NSW is the last remaining jurisdiction in Australia to pay interest to tenants on rental bonds.[12]

38. Should an interest rate on rental bonds still be prescribed? Why?

Part 7 Repeal, savings and transitional provisions

Repeal (clauses 35 – new)

This clause repeals the current Regulation. The current Regulation will be repealed on commencement of the *Residential Tenancies Regulation 2019.*

Savings and transitional provisions (clauses 36-41)

Savings and transitional provisions include the following:

- clause 36 – defines *existing residential tenancy agreement* for the savings and transitional provisions
- clause 37 – provides that any act, matter or thing that had effect under the current Regulation (before it is repealed) will continue to have effect under the proposed Regulation
- clause 38 – provides that long term lease mandatory terms apply to existing agreements
- clause 39 – provides that certain clauses apply to an existing residential tenancy agreement:
    - smoke alarm repair provisions (clauses 14-16)
    - minor alterations to a property (clause 17)
    - exemption for social housing tenancy agreements from the limitation on rent increases provision (clause 29)

[12] Report on the Statutory Review of the Residential Tenancies Act 2010.

- exemption for certain properties in a strata scheme from the smoke alarm repair provisions (clause 30)

- Clause 40 – provides that clause 28, which outlines additional charges payable by tenants for social housing tenancy agreements and separately metered gas, does not apply to a social housing tenancy agreement entered into before the proposed Regulation commences
- Clause 41 – provides that if an application is made to the Tribunal before the commencement of the proposed Regulation and is not finally decided, the monetary limit under clause 23 of the current Regulation continues to apply in respect of the application.

39. Are the prescribed savings and transitional provisions appropriate?
40. Are any other savings or transitional provisions required?

Schedule 4 Penalty notice offences

Current penalty notice offences have been reviewed and updated in Schedule 4 of the proposed Regulation. Additional offences under the Act and Amendment Act have been prescribed as penalty notice offences. Amounts for all of the prescribed penalty notice offences have been revised.

Penalty notices are a quick and efficient way of dealing with minor offences. NSW Fair Trading can serve a penalty notice on a person if there is evidence that they have committed an offence under the Act or Regulation.

41. Are the changes to penalty amounts in the proposed Regulation appropriate?

Appendix 1: Summary of the proposed Regulation

Clauses 1, 2 and 3 set out the name, date of commencement of the proposed Regulation and definitions.

Clause 4 prescribes the standard form of residential tenancy agreement in Schedule 1.

Clause 5 prohibits a residential tenancy agreement from containing a term that requires the tenant to use particular services to carry out any of their obligations under the agreement.

Clause 6 prescribes additional terms that must not be excluded or modified in a residential tenancy agreement for a fixed term of 20 years or more.

Clause 7 prescribes the condition report in Schedule 2.

Clause 8 sets out the kinds of material facts that a landlord or landlord's agent must not knowingly conceal from a prospective tenant to induce them to enter into a residential tenancy agreement.

Clause 9 prescribes that a renewable energy rebate that a social housing tenant receives for the supply of electricity because of solar hot water panels may be required to be paid to the landlord.

Clause 10 prescribes that a social housing tenant must pay to the landlord utility charges for gas and electricity used in a communal kitchen or other facilities and for cleaning those facilities.

Clause 11 prescribes that social housing tenants in joint venture retirement villages can be charged costs for optional services which they may choose to receive.

Clause 12 prescribes the water efficiency measures required by residential properties in order to allow for the payment of water usage charges by tenants.

Clause 13 –

a) exempts tenants from having to pay charges for access fees for gas (except bottled gas) under certain circumstances
b) provides that a landlord must pay charges in relation to access fees for gas (except bottled gas) under certain circumstances

Clause 14 provides that a landlord must engage a qualified professional to carry out repairs to a hardwired smoke alarm except in certain cases.

Clause 15 sets out the timeframes in which a landlord must carry out repairs to a smoke alarm and how often the battery in a smoke alarm should be installed or replaced.

Clause 16 prescribes the conditions under which a tenant may replace a battery in a smoke alarm, and that they can be reimbursed for doing this, by the landlord, within 14 days after giving written notice to the landlord or the landlord's agent.

Clause 17 prescribes the kinds of minor alterations that a tenant may make to the rental property, which would be unreasonable for a landlord to withhold consent, including alterations that may be made conditional on being carried out by a qualified professional.

Clause 18 prescribes the form a competent person must use to declare that a tenant or the tenant's dependent child is a victim of domestic violence, in Schedule 3.

Clause 19 exempts the NSW Land and Housing Corporation and the Aboriginal Housing Office from having to use the online rental bond service.

Clause 20 exempts agreements under which refuge or crisis accommodation is provided (in certain cases) from the Act, except where otherwise agreed.

Clause 21 exempts a residential tenancy agreement that forms part of an equity purchase agreement from the Act.

Clause 22 exempts heritage properties from the Act, except where otherwise agreed.

Clause 23 exempts agreements within St Patrick's Estate in Manly from the Act in certain circumstances.

Clause 24 exempts residential properties that are subject to a life tenancy from the Act.

Clause 25 exempts residential properties that are used principally as a residential college or hall of residence for students in educational institutions from the Act, except in certain cases.

Clause 26 exempts a landlord and tenant from section 29(1)-(3) of the Act if they are renewing a residential tenancy agreement for the same residential property, and both parties agree to use the previous property condition report for the tenancy created under the new residential tenancy agreement.

Clause 27 exempts certain social housing providers from the obligation to sign an acknowledgement on the tenancy agreement that they have read and understood the landlord's information statement.

Clause 28 –

a) exempts a landlord of social housing property that is not separately metered from the requirement to pay gas supply charges under certain circumstances
b) provides that a social housing tenant must pay any charges for gas supply at the property if is not separately metered under certain circumstances

Clause 29 exempts a social housing tenancy agreement from the limitation on rent increases for periodic agreements if the tenant receives a rental rebate in accordance with Part 7 of the *Housing Act 2001*.

Clause 30 provides that the smoke alarm repair requirements do not apply to a residential tenancy agreement if:

a) the agreement relates to property that comprises or includes a lot in a strata scheme, and
b) the landlord has advised the tenant in writing that the owners corporation of the scheme is responsible for the repair and maintenance of smoke alarms in the property.

Clause 31 exempts landlords and tenants under a social housing tenancy agreement from being able to apply to the Secretary for rectification orders.

Clause 32 prescribes the timeframes in which a person can apply to the Tribunal.

Clause 33 prescribes the monetary limit of the jurisdiction of the Tribunal.

Clause 34 prescribes the rate of interest payable by the Secretary on a rental bond.

Clause 35 repeals the current Regulation.

Clause 36 defines 'existing residential tenancy agreement' for the purposes of the savings and transitional provisions.

Clause 37 prescribes that any act, matter or thing that had effect under the repealed Regulation continues to have effect.

Clause 38 provides that clause 6 applies to a long-term lease that was entered into before the commencement of this Regulation.

Clause 39 provides that clauses 14, 15, 16, 17, 29 and 30 apply to an existing residential tenancy agreement.

Clause 40 provides that clause 28 does not apply to a social housing tenancy agreement that was entered into before commencement of this Regulation.

Clause 41 provides that the monetary limit for the Tribunal that was prescribed under the repealed Regulation continues to apply for existing applications made to the Tribunal before commencement of this Regulation.

Schedule 1 prescribes the standard form of agreement prescribed.

Schedule 2 prescribes the condition report.

Schedule 3 prescribes the declaration form by a competent person.

Schedule 4 sets out penalty notice offences and their penalties.

Appendix 2: Comparison against current Regulation

The following table sets out the changes and amendments in the proposed Regulation, compared to the current Regulation.

Clause in current Regulation	Clause in proposed Regulation and any change	Reason for the change
3 – Definitions	3 – includes the definition of 'heritage item' that was previously under cl 16 of the current Regulation.	Term is referred to more than once throughout the proposed Regulation.
7 – Disclosure of information to tenants generally	8(d) – Replace 'serious violent conduct' to 'serious indictable offence involving violent conduct within the last 5 years'.	Clarifies ambiguous term.
	8 – Expand list of material facts that a landlord or landlord's agent must disclose to a prospective tenant.	Supports Recommendation 3 of statutory review of the Act.
12 – Additional charges payable by landlord	13(1) – prescribe circumstances under which a tenant may be exempt from having to pay access fees for the supply of gas (except bottled gas) where the property is separately metered. 13(2) – prescribe circumstances under which a landlord must pay access fees for the supply of gas (except bottled gas) where the property is separately metered.	Clarification to avoid inconsistency with section 38(1)(a) of the Act, which requires a tenant to pay all charges for the supply of gas – except bottled gas – where there is separate metering.
12A – Circumstances of domestic violence – declaration by competent person	18 – Minor changes.	-
13 – Exemption from use of online rental bond service	19 – No change.	-
14 – Exemption for refuge or crisis accommodation	20 – Minor wording changes.	Improve readability.
15 – Exemption for equity purchase agreements	21 – No change.	-

Clause in current Regulation	Clause in proposed Regulation and any change	Reason for the change
16 – Exemption for heritage properties	22 – Definition of 'heritage item' is now under cl 3.	-
17 – Exemption for St Patrick's Estate, Manly	23 – The overall provision remains consistent with the current Regulation. However, some subclauses have been amalgamated and/or simplified, and redundant subclauses have been deleted.	Reduce the length of the clause and improves readability.
19 – Exemption for life tenancies	24 – No change.	-
20 – Exemption for residential colleges and halls of residence in educational institutions	25 – Minor wording changes.	Improve readability.
21 – Condition reports from preceding agreement may be used again	26 – No change.	-
22 – Times for making applications to Tribunal	32 – Minor wording changes.	Improve readability.
23 – Monetary limit of jurisdiction of Tribunal	33 – Increase monetary limit of Tribunal's jurisdiction for rental bond and other matters.	Requested by the Tribunal to allow more residential tenancy disputes to be resolved at the Tribunal level.
24 – Penalty notice offences and penalties	Schedule 4 - clause 24 in the current Regulation has been incorporated into Schedule 4.	Improve readability.
25 – Interest payable on rental bonds	34 – Minor wording changes.	Improve readability.
Schedule 1 – Standard form agreement	Schedule 1 – Updates the standard form of residential tenancy agreement.	Ensures the standard form of agreement is consistent with provisions in the Amendment Act and supports Recommendation 23 of the statutory review of the Act.

Clause in current Regulation	Clause in proposed Regulation and any change	Reason for the change
Schedule 2 – Condition report	Schedule 2 – Updates the condition report.	Ensures the condition report reflects changes in the Amendment Act and supports Recommendation 9 of the statutory review of the Act.
Schedule 2A – Declaration of competent person	Schedule 3 – Minor changes to declaration form.	Based on feedback from key stakeholders.
Schedule 3 – Penalty notice offences	Schedule 4 – Prescribe penalty amounts for new penalty notice offences and amend the amounts for some existing offences.	Ensures that penalty notice amounts are proportionate to compliance risk of offence.
-	6 (new) – Prescribes terms that must not be excluded or modified in fixed term agreements of 20 years or more.	Terms relating to tenants' safety and victims of domestic violence should be applied to all tenancy agreements.
-	14 (new) – Provide that a landlord must engage a qualified professional to carry out repairs to a hardwired smoke alarm, except in certain circumstances.	Ensures the safety of landlords when making repairs to hardwired smoke alarms, while preventing landlords from being unnecessarily burdened where it is safe to carry out the repair themselves.
-	15 (new) – Prescribe the time period for a landlord to repair smoke alarms.	Provides clarity to tenants and landlords about landlords' responsibilities for repairing smoke alarms.
-	16 (new) – Prescribe the conditions under which a tenant may replace the battery in a smoke alarm, and how the tenant can be reimbursed for doing this.	-
-	17 (new) – Prescribe the kinds of minor alterations for which the landlord cannot unreasonably refuse consent, and those alterations that may be conditional on being carried out by a qualified professional. Also prescribes situations where cl 17 does not apply.	Supports Recommendation 15 of statutory review of the Act. Provides greater clarity for tenants and landlords about their rights and obligations regarding minor alterations to the property. Helps to make rented property into a home.
-	27 (new) – Exempt social housing providers from having to carry out obligations in respect to the landlord's information statement.	Minimise administrative burden for social housing landlords.

Clause in current Regulation	Clause in proposed Regulation and any change	Reason for the change
-	28 (new) – Prescribe the conditions under which a social housing landlord may be exempt from having to pay charges for gas supply if the property is not separately metered. The social housing tenant must pay the gas supply charges if the exemption applies.	Exemption requested by DPIE and DFCSJ to reduce the significant cost impact on social housing providers for properties that have a centralised hot water system.
-	29 (new) – Exempt social housing tenancy agreements where the tenant receives a rental rebate, from the restriction on rental increases.	Ensure that the limitation on rent increases for periodic agreements does not affect the ability to adjust rental rebates.
-	30 (new) – Exempt landlords from smoke alarm repair requirements where the property comprises a lot in a strata scheme, and the landlord has advised the tenant in writing that the owners corporation is responsible for repairs and maintenance of smoke alarms in the property.	Avoid inconsistency with existing requirements and arrangements for the management of smoke alarm repairs under planning and strata laws.
-	31 (new) – Exempt landlords and tenants to a social housing tenancy agreement from being able to apply for rectification orders.	Avoid inconsistency with existing processes. The Tribunal continues to have authority to handle disputes involving property maintenance and repairs.
-	Part 7 (new) – Repeal current Regulation and introduce savings and transitional provisions.	Ensure smooth transition to the new Regulation for existing residential tenancy agreements.

Appendix 3: Key stakeholders

The following key stakeholders have been provided with a copy of the proposed Regulation and this RIS:

- Australian Housing and Urban Research Institute (AHURI)
- CHOICE
- City Futures Research Centre
- Combined Pensioners and Superannuants Association
- Department of Family and Community Services and Justice
    - Fire and Rescue NSW
    - Housing Statewide Services
    - Legal Aid NSW
    - NSW Civil and Administrative Tribunal (NCAT)
- Department of Planning, Industry and Environment
    - Aboriginal Housing Office (AHO)
    - NSW Land and Housing Corporation (LAHC)
- Domestic Violence NSW
- Energy and Water Ombudsman (EWON)
- Estate Agents Co-operative
- Homelessness NSW
- Law Society of NSW
- Marrickville Legal Centre
- New England and Western Tenants Advice and Advocacy Service
- NSW Council of Social Service (NCOSS)
- NSW Federation of Housing Associations Inc.
- NSW Treasury
- Property Council of Australia
- Property Owners Association (POA)
- Real Estate Institute NSW (REINSW)
- Redfern Legal Centre
- Salvation Army
- Shelter NSW
- Tenants' Union NSW (TUNSW)
- Women's Legal Service.

Appendix 4: Timeframes to apply to the Tribunal

Section of the Act	Application	Time during which application may be made
44(2)	Excessive rent increase	within 30 days after notice of rent increase is given
83(2)(A)	Landlord applying for a termination order	within 30 days after the termination date specified in the relevant termination notice
98(4)	Landlord applying to revoke a tenant's termination notice for landlords' breach	within 7 days after being served with the termination notice
115(3)	Tenant applying for declaration that termination notice has no effect on ground it is retaliatory	within 30 days after being served with the termination notice under s 84, otherwise within 14 days
125(3)	Tenant or former tenant applying for an order for tenancy against person with superior title	within 30 days after applicant was given notice of proceedings for the recovery of possession of the premises
134(3)	Order requiring landlord to pay compensation for goods disposed of by landlord or landlord's agent otherwise than in accordance with the Act	within 30 days after the applicant becomes aware that goods have been disposed of
134(3)	Order requiring landlord to pay compensation for goods damaged after being left on premises	within 30 days after the applicant becomes aware that goods have been damaged
134(3)	Order requiring landlord or landlord's agent to deliver goods into former tenant's or other person's possession	Within 3 months after applicant becomes aware that goods are in the possession of the landlord or landlord's agent
134(3)	Order requiring landlord or landlord's agent to pay proceeds of sale or equivalent value of goods to former tenant or person	within 6 months after the date the residential tenancy agreement is terminated
141(2)	Social housing tenant apply for excessive rent order	within 30 days after the cancellation of rent rebate takes effect
175(3)	For an order relating to the payment of rental bond	within 6 months after the bond is paid
190(1)	For an order relating to breaches of the agreement	within 3 months after becoming aware of breach