



New South Wales

Residential Tenancies Amendment (COVID-19) (No 2) Regulation 2020

under the

Residential Tenancies Act 2010

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Residential Tenancies Act 2010*.

KEVIN ANDERSON, MP
Minister for Better Regulation and Innovation

Explanatory note

The objects of this Regulation are to—

- (a) repeal and remake, with amendments, Part 6A of the *Residential Tenancies Regulation 2019* and Part 5 of the *Boarding Houses Regulation 2013* in relation to—
 - (i) the termination of certain residential tenancy agreements, and
 - (ii) the listing of certain tenants on a residential tenancy database for the non-payment of rent or charges, and
 - (iii) the eviction of certain residents from boarding houses, and
- (b) prescribe the repeal of Part 13 of the *Residential Tenancies Act 2010* on 26 March 2021, and
- (c) make provisions of a savings and transitional nature consequent on the repeal of Part 6A of the *Residential Tenancies Regulation 2019*.

This Regulation is made under the *Residential Tenancies Act 2010*, including sections 224 (the general regulation-making power), 229(1) and 230(b).

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1 Name of Regulation

This Regulation is the *Residential Tenancies Amendment (COVID-19) (No 2) Regulation 2020*.

2 Commencement

This Regulation commences on 16 October 2020 and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Residential Tenancies Regulation 2019

[1] Part 6A

Omit the Part. Insert instead—

Part 6A Response to COVID-19 pandemic

41A Definitions

In this Part—

formal rent negotiation process has the same meaning as in section 228A of the Act.

impacted tenant has the same meaning as in section 228A of the Act.

landlord does not include a landlord who is a social housing provider.

relevant period means the period ending on 26 March 2021.

residential tenancy agreement does not include a social housing tenancy agreement.

tenant does not include a tenant under a social housing tenancy agreement.

termination notice has the same meaning as in section 80 of the Act.

termination order has the same meaning as in section 80 of the Act.

41B Prohibition on landlords terminating agreements or recovering possession during relevant period

- (1) For the purposes of section 229(1) of the Act, a landlord is prohibited from doing any of the following during the relevant period—
 - (a) giving an impacted tenant a termination notice under section 87 of the Act on the ground specified in section 88 of the Act,
 - (b) applying to the Tribunal for a termination order under section 83(2) of the Act relating to a termination notice given under section 87 of the Act, on the ground specified in section 88 of the Act, to an impacted tenant,
 - (c) otherwise applying to the Tribunal for a termination order in relation to a residential tenancy agreement on the ground specified in section 88 of the Act if the tenant under the agreement is an impacted tenant.

Note—

Section 88 of the Act relates to a termination notice given by a landlord on the ground of a breach of the residential tenancy agreement arising solely from a failure to pay rent, water usage charges or utility charges payable by the tenant.

- (2) However, a landlord may give a termination notice or apply for a termination order that the landlord is otherwise prohibited from giving or applying for under subclause (1) if—
 - (a) the landlord has participated, in good faith, in a formal rent negotiation process with the impacted tenant, and
 - (b) it is fair and reasonable in the circumstances for the landlord to give the termination notice or apply for the order.
- (3) For the purposes of section 111(2) of the Act, a termination notice that is not given in accordance with this clause is taken not to have been given in accordance with Part 5 of the Act.

- (4) In dealing with an application by a landlord or an impacted tenant relating to a termination notice or a termination order, the Tribunal may, for the purposes of satisfying itself of the matters specified in subclause (2), have regard to the following—
- (a) any advice provided by NSW Fair Trading relating to the participation of the landlord or impacted tenant in the formal rent negotiation process, including whether the landlord or impacted tenant refused, or refused to make, a reasonable offer about rent,
 - (b) whether the impacted tenant has continued to make any payments towards the rent,
 - (c) the nature of any financial hardship experienced by the landlord or impacted tenant, including the general financial position of each party,
 - (d) the availability and affordability of reasonable alternative accommodation for the impacted tenant,
 - (e) any special vulnerability of the impacted tenant,
 - (f) the public health objectives of—
 - (i) ensuring citizens remain in their homes, and
 - (ii) preventing all avoidable movement of persons.
- (5) Subclause (4) does not limit the matters the Tribunal may have regard to.

41C Termination dates for particular termination notices given during relevant period

- (1) This clause provides, for the purposes of section 229(1)(c) of the Act, for the regulation of a landlord's right to specify a termination date in a termination notice given under particular provisions of the Act during the relevant period.
- (2) Despite any other provision of the Act or this Regulation, a landlord must not, in a termination notice given for the purposes of the following provisions during the relevant period, specify a termination date that is earlier than 90 days after the day on which the notice is given—
- (a) section 84,
 - (b) section 85,
 - (c) section 87, other than a termination notice on the ground specified in section 88,
- Note—**
Section 88 of the Act relates to a termination notice given by a landlord on the ground of a breach of the residential tenancy agreement arising solely from a failure to pay rent, water usage charges or utility charges payable by the tenant.
- (d) section 94.

41D Restriction on listing impacted tenants in residential tenancy databases

- (1) This clause provides, for the purposes of section 229(1)(c) of the Act, for the regulation of a landlord's right to list personal information about a person in a residential tenancy database.
- (2) Despite section 212 of the Act, a landlord or agent of a landlord must not list personal information about a person in a residential tenancy database if—
- (a) the breach of the residential tenancy agreement arose solely from a failure to pay rent or charges specified in section 88(1) of the Act, and
 - (b) at the time of the breach, the person was an impacted tenant.

41E Repeal of Part 13 of the Act

For the purposes of section 230(b) of the Act, 26 March 2021 is prescribed as the day on which Part 13 of the Act is repealed.

[2] Part 7 Repeal, savings and transitional provisions

Insert at the end of the Part, with appropriate Division and clause numbering—

Division Savings and transitional provisions for Residential Tenancies Amendment (COVID-19) (No 2) Regulation 2020

Definition

In this Division—

commencement means the commencement of the *Residential Tenancies Amendment (COVID-19) (No 2) Regulation 2020*.

Existing termination notices

Part 6A of this Regulation, as in force immediately before the commencement, continues to apply to a termination notice given by a landlord to an impacted tenant before the commencement.

Pending applications to terminate residential tenancy agreements

Part 6A of this Regulation, as in force immediately before the commencement, continues to apply to an application to the Tribunal for the following orders if the application was made but not finally determined before the commencement—

- (a) a termination order under section 83(2) of the Act relating to a termination notice given under section 87 of the Act, on the ground specified in section 88 of the Act, to an impacted tenant,
- (b) a termination order in relation to a residential tenancy agreement on the ground specified in section 88 of the Act if the tenant under the agreement is an impacted tenant.

Schedule 2 Amendment of Boarding Houses Regulation 2013

Part 5

Omit the Part. Insert instead—

Part 5 Response to COVID-19 pandemic

32 Definitions

In this Part—

impacted resident means a resident of a boarding house who is impacted by the COVID-19 pandemic.

relevant period means the period ending on 26 March 2021.

residency fees means the fees payable in connection with a residency, including any occupancy fee or rent, or fees for services payable under an occupancy agreement.

33 When a resident is impacted by the COVID-19 pandemic

- (1) For the purposes of this Part, a resident is impacted by the COVID-19 pandemic if—
 - (a) the resident has—
 - (i) lost employment or income as a result of the impact of the COVID-19 pandemic, or
 - (ii) had a reduction in work hours or income as a result of the impact of the COVID-19 pandemic, or
 - (iii) had to stop working, or materially reduce the resident's work hours, because of—
 - (A) the resident's illness with COVID-19, or
 - (B) the resident's carer responsibilities for a family member ill with COVID-19, and
 - (b) as a result of any of the matters stated in paragraph (a), the resident's weekly income has been reduced by at least 25% compared to the resident's weekly income before the occurrence of any of the matters.
- (2) In this clause—

resident's weekly income means the total of the income, including any government payments, received by the resident in a week.

34 Notices of eviction to impacted residents for non-payment of residency fees during relevant period

- (1) This clause regulates, for the purposes of section 229(1)(c) of the *Residential Tenancies Act 2010*, the notice that a proprietor must give an impacted resident if the proprietor intends to evict the impacted resident solely on the ground that the impacted resident has not paid residency fees payable under an occupancy agreement during the relevant period.
- (2) The proprietor must give the impacted resident the following notice of the eviction—
 - (a) if the proprietor has participated, in good faith, in a formal rent negotiation process with the impacted resident but an agreement about the residency fees was not reached because the impacted resident did not participate in the process in good faith—60 days written notice,

- (b) otherwise—6 months written notice.
- (3) If a proprietor has not given notice in accordance with this clause, the proprietor is taken not to have complied with the occupancy principles as the principles apply under Part 3 of the Act.
- (4) In this clause—
formal rent negotiation process means a dispute resolution process between a proprietor and an impacted resident, facilitated by an independent third party, to negotiate the residency fees payable under an occupancy agreement having regard to the specific circumstances of the proprietor and the impacted resident.

35 Notices of eviction to residents on particular grounds during relevant period

- (1) This clause regulates, for the purposes of section 229(1)(c) of the *Residential Tenancies Act 2010*, the notice that a proprietor must give a resident if the proprietor intends to evict the resident on a ground other than an excluded ground during the relevant period.
- (2) The proprietor must give the resident not less than 90 days written notice of the eviction.
- (3) If a proprietor has not given notice in accordance with this clause, the proprietor is taken not to have complied with the occupancy principles as the principles apply under Part 3 of the Act.
- (4) In this clause—
excluded ground means any of the following grounds—
 - (a) the resident has not paid residency fees payable under the occupancy agreement, but only if the resident is not an impacted resident,
 - (b) the resident has intentionally or recklessly caused or permitted serious damage to the premises or other residents' property,
 - (c) the resident is using the premises for illegal purposes,
 - (d) the resident has threatened, abused, intimidated or harassed other residents or the proprietor.