



New South Wales

Residential Tenancies Amendment (Declaration by Competent Person) 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) exempt a residential tenancy agreement from the *Residential Tenancies Act 2010* (***the Act***) for a landlord that is a council that lets the premises to a tenant who is a social housing provider in particular circumstances, and
- (b) provide that the landlord must pay all charges for sewerage usage for certain residential premises, and
- (c) amend the form used to make a declaration that a person is a victim of domestic violence for the purposes of terminating a residential tenancy agreement under the Act to allow additional classes of competent persons to make the declaration, and
- (d) make transitional arrangements for persons who have used the previous declaration form.

This Regulation is made under the *Residential Tenancies Act 2010*, including sections 12, 40(1)(h), 105B(3), 105C(2)(d) and 224 (the general regulation-making power).

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1 Name of Regulation

This Regulation is the *Residential Tenancies Amendment (Declaration by Competent Person) Regulation 2020*.

2 Commencement

This Regulation commences immediately after the commencement of Schedule 1.10[9] of the *Better Regulation Legislation Amendment Act 2019* and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Residential Tenancies Regulation 2019

[1] Clause 12A

Insert after clause 12—

12A Additional charges payable by landlord in relation to sewerage usage— s 40(1)(h) of Act

- (1) This clause applies to residential premises within a local government area where the council charges for sewerage usage.
- (2) For the purposes of section 40(1)(h) of the Act, the landlord must pay all charges for sewerage usage for the residential premises.

[2] Clause 36A

Insert after clause 36—

36A Head leases involving councils and social housing providers—s 12 of Act

- (1) A residential tenancy agreement is exempt from the operation of the Act if—
 - (a) under the agreement, the landlord is a council who lets the premises to a tenant who is a social housing provider, and
 - (b) the premises are let to the social housing provider for the purposes of the social housing provider sub-letting the premises under a social housing tenancy agreement, and
 - (c) the agreement is in writing and states that this clause applies to the agreement.
- (2) If the tenant ceases to be a social housing provider during the currency of the term of the residential tenancy agreement, the exemption under this clause does not cease to have effect until 6 months after the date the tenant ceases to be a social housing provider.

[3] Part 7, Division 5

Insert after Division 4—

Division 5 Transitional provision for Residential Tenancies Amendment (Declaration by Competent Person) Regulation 2020

59 Use of previous form of declaration by competent person

Despite clause 23, a declaration made by a medical practitioner using the form prescribed by Schedule 3 as in force immediately before the commencement of this clause is taken to satisfy the requirements of sections 105B(3) and 105C(2)(d) of the Act.

[4] Schedule 3

Omit the Schedule. Insert instead—

Schedule 3 Declaration by competent person

(Clause 23)

TERMINATING A TENANCY IN CIRCUMSTANCES OF DOMESTIC VIOLENCE

Purpose of this declaration

Under the *Residential Tenancies Act 2010 (the Act)*, a tenant can terminate their residential tenancy agreement without being penalised if the tenant or the tenant's dependent child is in circumstances of domestic violence.

To terminate the agreement in this way, the tenant seeking to end the tenancy (the *tenant*) must give their landlord a domestic violence termination notice together with **one** of the four documents listed under the Act for this purpose. One of those documents is a signed declaration from a "competent person" that the tenant, or the tenant's dependent child, is a victim of domestic violence perpetrated by the "relevant domestic violence offender" (see below) during the currency of the residential tenancy agreement. This completed declaration may be used instead of a Domestic Violence Order, a Family Law Injunction or a Certificate of Conviction (these documents are the other 3 documents listed under the Act).

Who can make this declaration

You can only make this declaration if:

- you are a "competent person" under the Act, that is, you are:
 - a registered health practitioner within the meaning of the *Health Practitioner Regulation National Law (NSW)*, who holds general or specialist registration under that Law, or
 - a person registered as a social worker (a member of the Australian Association of Social Workers), or
 - an employee of a NSW government agency that provides services relating to child welfare, or
 - an employee of a non-government agency that receives government funding to provide services relating to:
 - domestic violence or sexual assault, or
 - refuge or emergency accommodation, or
 - a person approved by the Commissioner of Victims Rights under the *Victims Rights and Support Act 2013* to provide approved counselling services under that Act, and
- you have consulted with the tenant, and
- if applicable, you have consulted with any dependent child of the tenant who is the victim of the domestic violence.

Additional information about the above categories of competent person and who can make this declaration is provided at the end of this form.

Who is a "relevant domestic violence offender"

A "relevant domestic violence offender" must be the tenant's co-tenant or former co-tenant, or an occupant or former occupant of the tenant's residence or a person with whom the tenant has or has had a domestic relationship. For this reason, and to ensure that the rights and obligations of a co-tenant, if any, are not impacted, the tenant has to identify the relevant domestic violence offender and the name of that person has to be recorded in this declaration.

Note. The use of the term "relevant domestic violence offender" is only to establish if the tenant is in circumstances of domestic violence under the Act. It does not mean that the person the tenant identifies as the perpetrator of the domestic violence has been convicted of a domestic violence offence.

How to complete this declaration

1. Before you complete this form, you will need to assess if, in your professional opinion, the tenant, or the tenant's dependent child, is a victim of domestic violence that occurred during the tenant's current tenancy.
2. **You are not required to prove that domestic violence has taken place.** Your assessment should be based on your professional observations and the information you obtain during your consultation with the tenant and, if applicable, the tenant's dependent child.

Note. You should not, under any circumstances, contact or seek information from the relevant domestic violence offender. Doing so may put the tenant, the tenant's dependent child or others at risk.

3. Once you have assessed the tenant and their circumstances, and if applicable, the tenant's dependent child, you must complete all parts of this form by—
 - (a) entering the details of the tenant and, if applicable, the details of the tenant's dependent child, and
 - (b) entering the name of the relevant domestic violence offender, based on the information the tenant provides you, and
 - (c) selecting the type of relationship between the tenant and the relevant domestic violence offender, based on information the tenant provides you, and
 - (d) completing and signing the declaration.
4. Give the completed declaration to the tenant and keep a copy for your records.
5. For further information on who can make this declaration and how to complete this form go to the Fair Trading NSW website.

Note. The Fair Trading NSW website is www.fairtrading.nsw.gov.au

WARNING: Knowingly providing false or misleading information in connection with this declaration may be an offence under section 105H of the Act, for which a maximum penalty of 100 penalty units or 2 years imprisonment, or both, applies. This offence can apply to the tenant, the person making this declaration, or both.

It is NOT an offence to make a declaration based on information that you believed to be true at the time of making the declaration. You are NOT required to prove that domestic violence has taken place.

PART 1: Details of tenant seeking to terminate the tenancy

Family name—

Given names—

Address of the rented
residential premises—

Phone number or the
name and contact details
of a nominated person
(OPTIONAL)—

Note. A separate form needs to be completed, and declaration made, for each tenant seeking to be declared a victim of domestic violence.

PART 2: Details of person being declared a victim of domestic violence

1. Who is the person being declared a victim of domestic violence?

the tenant

OR

a dependent child of the tenant

Note. If the tenant is a victim of domestic violence, it is not necessary to also declare that a dependent child is a victim of domestic violence.

A **dependent child** cannot be declared a victim of domestic violence if the **tenant** answers “no” to either of the following questions—

2. Is the **dependent child** wholly or partly dependent on the **tenant** for support?

Yes No

3. Does the **dependent child** occupy, whether permanently or from time to time, the residential premises specified in Part 1?

Yes No

Note. The dependent child does not have to be the tenant's child.

Details of dependent child (if applicable)

Family name—

Given names—

Date of birth—

PART 3: Details of relevant domestic violence offender and relationship with tenant

1. Who is the person **the tenant has identified** as the perpetrator of the domestic violence?

Full name—

Note. You are authorised to collect, hold, use or disclose personal information about a “relevant domestic violence offender” that you require to make this declaration.

2. Is the person named above, in question 1 in this Part, a co-tenant/former co-tenant or an occupant/former occupant of the residential premises specified in Part 1?

Yes No

If the answer to question 2 is “no”, the following question MUST be completed.

3. What is the relationship the tenant has or had with the person named above (the “relevant domestic violence offender”)? [*Select the description of the most recent relationship and cross out “are” or “were” as applicable*]

The tenant and the relevant domestic violence offender are/were—

- married to each other
- in a de facto relationship with each other
- in an intimate personal relationship with each other, whether or not the relationship is/was sexual
- living in the same household
- living as long-term residents in the same residential facility at the same time as each other, excluding facilities that are correctional centres or detention centres
- in a relationship involving the tenant’s dependence on the ongoing paid or unpaid care of the tenant by the relevant domestic violence offender
- relatives
- in the case of Aboriginal persons or Torres Strait Islanders—in an extended family or kinship relationship according to the Indigenous kinship system of the culture of either the tenant or the relevant domestic violence offender
- married to, or in a de facto or intimate personal relationship with, the same person (that is, a common third person) even if it was at different times and they have not met

If—

- **the answer to question 2 in this Part is “no”, and**
- **the tenant and the person named above are NOT in any of the relationships listed above in question 3 in this Part,**

then the person the tenant has identified in Part 3 as the perpetrator of the domestic violence is NOT the “relevant domestic violence offender” for the purposes of this declaration. This means the declaration in Part 4 cannot be completed.

PART 4: Declaration by competent person

I declare that:

I am [please select one of the following options – select the most relevant option if more than one applies]:

- a registered health practitioner within the meaning of the *Health Practitioner Regulation National Law (NSW)*, who holds general or specialist registration under that Law,
- registered as a social worker (a member of the Australian Association of Social Workers),
- an employee of a NSW government agency that provides services relating to child welfare,
- an employee of a non-government agency that receives government funding to provide services relating to domestic violence or sexual assault,
- an employee of a non-government agency that receives government funding to provide services relating to refuge or emergency accommodation,
- approved by the Commissioner of Victims Rights under the *Victims Rights and Support Act 2013* to provide approved counselling services under that Act.

Note. Additional information about the above categories and who can make this declaration is provided at the end of this form.

I personally consulted with the tenant and the dependent child [cross out the words “and the dependent child” if not applicable] in my professional capacity on (date of consultation).

On the basis of information obtained from the tenant and the dependent child [cross out the words “and the dependent child” if not applicable], and observations made in the course of that consultation, I have formed the view that—

[Complete **EITHER** Part A1 **OR** Part A2 and cross out the Part that is not applicable]

Part A1

- (name of tenant)
- is a victim of domestic violence perpetrated by the person named by the tenant in question 1 of Part 3, being the relevant domestic violence offender, on/during the period [cross out the words that are not applicable] (approximate date on which, or period during which, the domestic violence was perpetrated).

OR

Part A2

- (name of dependent child)
- is a victim of domestic violence perpetrated by the person named by the tenant in question 1 of Part 3, being the relevant domestic violence offender, on/during the period [cross out the words that are not applicable] (approximate date on which, or period during which, the domestic violence was perpetrated).

[Complete **EITHER** Part B1 **OR** PART B2 **OR** Part B3, whichever is applicable to the option selected at the beginning of Part 4]

Part B1: Details of registered health practitioner

Full name _____

Registration number _____

Signature _____

Date (dd/mm/yyyy) _____

OR

Part B2: Details of person registered as a social worker (a member of the Australian Association of Social Workers (AASW))

Full name _____

AASW membership number _____

Signature _____

Date (dd/mm/yyyy) _____

OR

Part B3: Details of all other competent persons

Full name _____

Occupation _____

Name of organisation (government or non-government agency employees only)

Signature _____

Date (dd/mm/yyyy) _____

Note. Competent persons who are signing the declaration as approved counsellors under the *Victims Rights and Support Act 2013* do not have to complete the Name of organisation part of the form.

Please keep a copy of this form and any attachments for your own records.

CONFIDENTIALITY: A person who has this document (or a copy of this document) in their possession must ensure that it is stored securely and, if disposed, disposed of securely. This document, and the information contained in this document, must not be used or disclosed by any person except in accordance with the *Residential Tenancies Act 2010*, Part 5, Division 3A, unless disclosure is permitted or compelled by law.

Further guidance

The following information is intended as general guidance only for assisting in the completion of this form and should not be relied on as legal advice.

Who can make this declaration as a registered health practitioner?

A registered health practitioner can make this declaration if they hold either general registration under Part 7, Division 1, or specialist registration under Part 7, Division 2, of the *Health Practitioner Regulation National Law (NSW)* in one of the following health professions:

- Aboriginal and Torres Strait Islander health practice
- Chinese medicine
- chiropractic
- dental, including the profession of a dentist, dental therapist, dental hygienist, dental prosthetist and oral health therapist
- medical
- medical radiation practice
- midwifery
- nursing
- occupational therapy
- optometry
- osteopathy
- paramedicine
- pharmacy
- physiotherapy
- podiatry
- psychology

Who is registered as a social worker with the Australian Association of Social Workers?

Social workers who are current members of the Australian Association of Social Workers (AASW) other than student members.

Note. Further information about members of the AASW can be found on the AASW website at <https://www.aasw.asn.au>.

Who is an employee of a NSW government agency that provides services relating to child welfare?

An employee of a NSW government agency who works in child protection.

Who is a person approved by the Commissioner of Victims Rights to provide approved counselling services under the *Victims Rights and Support Act 2013*?

Information about the approved counselling services under the *Victims Rights and Support Act 2013* can be found on the relevant agency's website.

Note. The information can be found on the Department of Communities and Justice website at <https://www.victimsservices.justice.nsw.gov.au>