



New South Wales

# Residential Tenancies Amendment (Circumstances of Domestic Violence) Regulation 2018

under the

Residential Tenancies Act 2010

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

MATT KEAN, MP  
Minister for Innovation and Better Regulation

## Explanatory note

The objects of this Regulation are:

- (a) to prescribe the form to be used by medical practitioners when making a declaration that a person is a victim of domestic violence for the purposes of terminating a residential tenancy agreement under the *Residential Tenancies Act 2010*, and
- (b) to amend the Standard Form Agreement as a consequence of the amendments to that Act made by the *Residential Tenancies Amendment (Review) Act 2018* that relate to terminating a residential tenancy agreement in circumstances of domestic violence.

This Regulation is made under the *Residential Tenancies Act 2010*, including sections 15, 105B (3), 105C (2) (d) and 224 (the general regulation-making power).

## **Residential Tenancies Amendment (Circumstances of Domestic Violence) Regulation 2018**

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### **1 Name of Regulation**

This Regulation is the *Residential Tenancies Amendment (Circumstances of Domestic Violence) Regulation 2018*.

### **2 Commencement**

This Regulation commences on 28 February 2019 and is required to be published on the NSW legislation website.

## Schedule 1 Amendment of Residential Tenancies Regulation 2010

### [1] Clause 12A

Insert after clause 12:

#### 12A Circumstances of domestic violence—declaration by competent person: ss 105B (3) and 105C (2) (d)

For the purposes of sections 105B (3) and 105C (2) (d) of the Act, a declaration by a competent person is to be in the form and contain the matters set out in Schedule 2A.

### [2] Schedule 1 Standard Form Agreement

Insert after clause 16:

**Note.** Under section 54 of the *Residential Tenancies Act 2010*, the vicarious liability of a tenant for damage to residential premises caused by another person is not imposed on a tenant who is the victim of a domestic violence offence, or a co-tenant who is not a relevant domestic violence offender, if the damage occurred during the commission of a domestic violence offence (within the meaning of that Act).

### [3] Schedule 1, clause 41, note

Omit “and an offer of social housing or a place in an aged care facility”.

Insert instead “, an offer of social housing or a place in an aged care facility, and being in circumstances of domestic violence”.

### [4] Schedule 2A

Insert after Schedule 2:

## Schedule 2A Declaration of competent person

(Clause 12A)

### Termination of tenancy in circumstances of domestic violence

#### Purpose of this declaration

Under the *Residential Tenancies Act 2010*, a tenant can terminate a 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, the tenant must give to the tenant’s landlord a termination notice together with one of the documents that the Act requires to be annexed to a domestic violence termination notice. One of those specified documents is a signed declaration by a medical practitioner that the tenant, or the tenant’s dependent child, is a victim of domestic violence perpetrated by the “relevant domestic violence offender” during the currency of the residential tenancy agreement.

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.

**Note.** The use of the term “relevant domestic violence offender” is only for the purposes of establishing whether the tenant is in circumstances of domestic violence under the Act. It does not mean that the person identified by the tenant as the perpetrator of the domestic violence has been convicted of a domestic violence offence.

### Who can make this declaration

You can only make this declaration if:

- you are a medical practitioner registered under the *Health Practitioner Regulation National Law (NSW)* in the medical profession, and
- you have consulted with the tenant, and
- if applicable, you have also consulted with any dependent child of the tenant who is the victim of the domestic violence.

### How to complete this declaration

The medical practitioner must complete all parts of this form.

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 an incident of domestic violence has taken place.** Your assessment should be based on your professional observations and the information you obtain during your consultation.
3. Once you have made your assessment, you should complete 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 provided to you by the tenant, and
  - (c) nominating the type of relationship between the tenant and the relevant domestic violence offender, based on the information provided to you by the tenant.
4. Give the completed declaration to the tenant and keep a copy for your records.
5. For further information on how to complete this form go to [www.fairtrading.nsw.gov.au](http://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 *Residential Tenancies Act 2010*, for which a maximum penalty of 2 years imprisonment or 100 penalty units, or both, applies.

**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.**

### PART 1: Details of tenant seeking to terminate the tenancy

Family name:	
Given names:	
Address of the rented residential premises:	
Phone number:	

**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 seeking to be declared a victim of domestic violence

1. Who is the person seeking to be 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

**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 identified by the tenant as the perpetrator of the domestic violence?

Full name:	
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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 a sexual relationship
- 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

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), that person **CANNOT be a relevant domestic violence offender** for the purpose of making a declaration and **PART 4 CANNOT BE COMPLETED**.

**PART 4: Declaration by medical practitioner**

<p><b>I declare that:</b></p> <p>I personally consulted with the <b>tenant</b> and the dependent child [<i>cross out the words "and the dependent child" if not applicable</i>] in my professional capacity as a medical practitioner on ..... (date of consultation).</p> <p>On the basis of information obtained and observations made in the course of that consultation, I have formed the view that:</p> <p>[<i>Complete EITHER Part A OR Part B and cross out the Part that is not applicable</i>]</p> <p><b>Part A</b></p> <ul style="list-style-type: none"><li>• ..... (name of tenant)</li><li>• is a victim of domestic violence perpetrated by the person named in question 1 of Part 3, being the relevant domestic violence offender on/during the period [<i>cross out the words that are not applicable</i>]..... (date on which, or period during which, the domestic violence was perpetrated).</li></ul> <p><b>OR</b></p> <p><b>Part B</b></p> <ul style="list-style-type: none"><li>• ..... (name of dependent child) is a victim of domestic violence perpetrated by the person named in question 1 of Part 3, being the relevant domestic violence offender on/during the period [<i>cross out the words that are not applicable</i>] ..... (date on which, or period during which, the domestic violence was perpetrated).</li></ul> <p><b>Full name</b> _____</p> <p><b>Registration number</b> _____</p> <p><b>Signature</b> _____</p> <p><b>Date</b> _____</p> <p>Please keep a copy of this form and all attachments for your records.</p>
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