



New South Wales

Residential Tenancies Amendment (Miscellaneous) 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—

- (a) to clarify the circumstances in which a tenant may replace a removable battery in a smoke alarm, and
- (b) to prescribe the maximum monetary penalty that may be imposed by a Local Court for proceedings against section 105H(1) or (2) of the *Residential Tenancies Act 2010* (the *Act*) to align the penalty with the amount prescribed in the Act, and
- (c) to prescribe the day Part 13 of the Act is repealed, and
- (d) to make transitional arrangements to—
 - (i) defer the operation of clause 20(a) for particular landlords by 12 months, and
 - (ii) extend the term set out in clause 49 of the Standard Form Agreement to an existing residential tenancy agreement, and
 - (iii) clarify the operation of clauses extended by clause 50 of the Regulation where the clauses are substantially similar to clauses of an existing residential tenancy agreement, and
- (e) to make minor consequential amendments to the Standard Form Agreement.

This Regulation is made under the *Residential Tenancies Act 2010*, including sections 15, 64A, 202, 224 (the general regulation-making power) and 230.

Residential Tenancies Amendment (Miscellaneous) Regulation 2020

under the

Residential Tenancies Act 2010

1 Name of Regulation

This Regulation is the *Residential Tenancies Amendment (Miscellaneous) Regulation 2020*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Schedule 1 Amendment of Residential Tenancies Regulation 2019

[1] Clause 14 Time to repair or replace smoke alarm

Insert “in accordance with clause 15” after “alarm” in clause 14(1)(a).

[2] Clause 15 Repairs to smoke alarms

Omit clause 15(1). Insert instead—

- (1) For the purposes of section 64A(2)(a) and (b) of the Act—
 - (a) the following circumstances are prescribed in relation to a battery-operated smoke alarm—
 - (i) the landlord, a person authorised by the landlord or a tenant may replace a removable battery in the smoke alarm,
 - (ii) the landlord or a person authorised by the landlord, other than the tenant, may replace the smoke alarm, or
 - (b) the following circumstances are prescribed in relation to a hardwired smoke alarm—
 - (i) the landlord, a person authorised by the landlord or a tenant may replace a removable back-up battery in the smoke alarm,
 - (ii) the landlord or a person authorised by the landlord, other than the tenant, must engage an authorised electrician to repair or replace the smoke alarm.

[3] Clause 15(2)

Omit “(1)(a) or a removable back-up battery under subclause (1)(c)”.

Insert instead “(1)(a)(i) or a removable back-up battery under subclause (1)(b)(i)”.

[4] Clause 16, heading

Omit “**repair or replace**”. Insert instead “**fix**”.

[5] Clause 16(1)(b)

Omit the paragraph. Insert instead—

- (b) the landlord has failed to replace a removable battery in the smoke alarm, or replace the smoke alarm, in accordance with clauses 14 and 15, and

[6] Clause 16(1)(c)

Omit “repair and replacement”. Insert instead “maintenance”.

[7] Clause 16(2)

Omit the subclause. Insert instead—

- (2) For the purposes of section 64A(2) of the Act, the tenant may do any thing a landlord is authorised to do under clause 15(1)(a) in relation to the smoke alarm.

[8] Clause 17 Failure of landlord to repair or replace hardwired smoke alarm

Omit clause 17(1)(b). Insert instead—

- (b) the landlord has failed to repair or replace the smoke alarm in accordance with clauses 14 and 15, and

[9] Clause 40A

Insert after clause 40—

40A Maximum monetary penalty for s105H of Act

For the purposes of section 202(3) of the Act, the maximum monetary penalty that may be imposed by the Local Court in proceedings for an offence against section 105H(1) or (2) of the Act is 100 penalty units.

[10] Clause 41F

Insert after clause 41E—

41F Repeal of Part 13 of Act

For the purposes of section 230(b) of the Act, Part 13 of the Act is repealed on 15 October 2020.

[11] Part 7, Division 3

Insert after Division 2—

Division 3 Transitional provisions for Residential Tenancies Amendment (Miscellaneous) Regulation 2020

51 Definitions

In this Division—

Agreement means the standard form of the residential tenancy agreement set out in Schedule 1.

existing residential tenancy agreement means a residential tenancy agreement in force immediately before 23 March 2020.

52 Effect of Division

A provision of this Division is taken to have effect from the commencement of this Regulation.

Note. This Regulation commenced on 23 March 2020.

53 Smoke alarm requirements for particular landlords

Clause 20(a) does not apply until 12 months after the commencement of this Regulation if the landlord is—

- (a) the Aboriginal Housing Office, or
- (b) the New South Wales Land and Housing Corporation, or
- (c) a registered community housing provider within the meaning of the *Community Housing Providers National Law (NSW)* if the New South Wales Land and Housing Corporation manages the maintenance of the premises.

54 Extension of term of agreement—significant health or safety risks

For the purposes of section 15(2)(d) of the Act, the term set out in clause 49 of the Agreement extends to existing residential tenancy agreements.

55 Operation of extended clauses

- (1) A term of the Agreement, extended by operation of clause 50, replaces a substantially similar clause of an existing residential tenancy agreement.

- (2) Without limiting subclause (1), the following terms of an existing residential tenancy agreement are replaced by a term of the Agreement—
- (a) clause 4.6 of an existing residential tenancy agreement is replaced by clauses 4.6 and 4.7 of the Agreement,
 - (b) clause 5 of an existing residential tenancy agreement is replaced by clauses 5 and 6 of the Agreement,
 - (c) clause 11.4 of an existing residential tenancy agreement is replaced by clause 12.4 of the Agreement,
 - (d) clause 16.4 of an existing residential tenancy agreement is replaced by clause 17.4 of the Agreement,
 - (e) clauses 27 and 28 of an existing residential tenancy agreement are replaced by clauses 30 and 31 of the Agreement,
 - (f) clauses 38 and 39 of an existing residential tenancy agreement are replaced by clauses 42–44 of the Agreement.

[12] Schedule 1 Standard Form Agreement

Insert after Note 3 to clause 42—

Note 4. Section 64A of the Act provides that a smoke alarm includes a heat alarm.

[13] Schedule 1

Omit “Clause 5 of this agreement provides for rent to be able to be increased if the agreement continues in force.” from item 2 of the Notes appearing after clause 55.

Insert instead—

Clauses 5 and 6 of this agreement provide for rent to be able to be increased if the agreement continues in force, with certain restrictions.