



New South Wales

# Residential Tenancies Amendment (COVID-19 Pandemic Emergency Response) Regulation (No 2) 2021

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 object of this Regulation is to—

- (a) extend provisions exempting tenants who are financially impacted by the COVID-19 pandemic from the operation of provisions of the *Residential Tenancies Act 2010* (*the Act*) or the regulations made under that Act (*the regulations*) that would result in the termination of residential tenancy agreements or the recovery of possession of premises on the grounds of non-payment of rent or charges if the tenants continue to pay at least 25% of the rent payable under the agreement until 12 November 2021, and
- (b) from 12 November 2021 until 12 February 2022, exempt those tenants who accrued rental arrears from the operation of provisions of the Act or the regulations that would result in the termination of residential tenancy agreements or the recovery of possession of premises on the grounds of those arrears unless—
  - (i) if the landlord and the tenant have an agreement for the repayment of the arrears—the tenant has failed to comply with the agreement on at least 2 occasions and it is otherwise fair and reasonable for the provisions to apply to the tenant, or
  - (ii) if the landlord and the tenant do not have an agreement for the repayment of the arrears—the landlord and tenant have participated in good faith in a formal arrears repayment negotiation process and it is otherwise fair and reasonable for the provisions to apply to the tenant.

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### **1 Name of Regulation**

This Regulation is the *Residential Tenancies Amendment (COVID-19 Pandemic  
Emergency Response) Regulation (No 2) 2021*.

### **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 41A Definitions

Omit “end of 11 September 2021” from clause 41A, definition of *moratorium period*, paragraph (b).

Insert instead “the beginning of 12 November 2021”.

### [2] Clause 41CA

Insert after clause 41C—

#### **41CA Transitional exemption relating to termination of residential tenancy agreements or recovery of possession for non-payment of rent or charges**

- (1) This clause applies in relation to a tenant who was an impacted tenant during the moratorium period.
- (2) For the purposes of the Act, section 12, the tenant is, during the moratorium transitional period, exempt from the operation of any provision of the Act or regulations that would result in the termination of the residential tenancy agreement or the recovery of possession of the premises from the tenant on a ground relating to arrears accrued during the moratorium period unless—
  - (a) if the landlord and the tenant have agreed to a repayment plan for the arrears—
    - (i) the tenant has failed to make payments at the times and in the amounts required by the repayment plan on 2 or more consecutive occasions, and
    - (ii) it is otherwise fair and reasonable in the circumstances for the tenant not to be exempt from the operation of those provisions.
  - (b) if the landlord and the tenant have not agreed to a repayment plan for the arrears—
    - (i) the landlord has participated in good faith in a formal arrears repayment negotiation process with the tenant about a repayment plan for the arrears, and
    - (ii) it is otherwise fair and reasonable in the circumstances for the tenant not to be exempt from the operation of those provisions.
- (3) The Tribunal must have regard to the following for the purposes of deciding under this clause whether it is fair and reasonable in the circumstances for the tenant not to be exempt from the operation of a provision—
  - (a) the steps taken by the landlord and tenant to negotiate a repayment plan,
  - (b) any payments made by the impacted tenant towards the arrears,
  - (c) the nature of any financial hardship experienced by the landlord or tenant, including the general financial position of each party,
  - (d) the availability and affordability of reasonable alternative accommodation for the tenant,
  - (e) whether the landlord has applied for any financial assistance or land tax rebates offered by the State that is available to landlords who reduce rent and, if so, whether the landlord has received any financial assistance or land tax rebate,
  - (f) any special vulnerability of the tenant.

- (4) Subclause (3) does not limit the matters the Tribunal may have regard to.
- (5) For the purposes of subclause (3)(a), the Tribunal may have regard to any advice provided by NSW Fair Trading relating to the participation of the landlord or tenant in a formal arrears repayment negotiation process, including whether the landlord or tenant refused, or refused to make, a reasonable offer.
- (6) This clause does not affect any agreement between the landlord or tenant to waive or defer any rent or charges payable by the tenant.
- (7) In this clause—
  - arrears accrued during the moratorium period* means rent or charges that—
    - (a) were payable by the tenant during the moratorium period, and
    - (b) were not paid, either with or without the agreement of the landlord, and
    - (c) are still owing.
  - formal arrears repayment negotiation process* means a dispute resolution process between a landlord and a tenant, facilitated by NSW Fair Trading, to negotiate a repayment plan for arrears accrued during the moratorium period having regard to the specific circumstances of the landlord and the tenant.
  - moratorium transitional period* means the period—
    - (a) starting at the beginning of 12 November 2021, and
    - (b) ending at the end of 12 February 2022.

**[3] Clause 41D Repeal of Part**

Omit “30 September 2021” from clause 41D.

Insert instead “at the end of 12 February 2022”.