



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: Prop:EEgl1766167

1 August 2019

Residential Tenancies Regulation 2019
Better Regulation Division, Regulatory Policy
McKell Building
2-24 Rawson Place
Sydney NSW 2000

By email: rtreg@finance.nsw.gov.au

Dear Sir/Madam,

Regulatory Impact Statement - Residential Tenancies Regulation 2019 (“Draft Regulation”)

The Law Society of NSW appreciates the opportunity to comment on the Draft Regulation and the Regulatory Impact Statement. The Law Society’s Property Law Committee has contributed to this submission.

Our responses to the questions raised in the Regulatory Impact Statement are set out in the attached table.

We would be pleased to meet with you to further discuss the matters raised in this submission. Any questions should be directed to Gabrielle Lea, Policy Lawyer on 9926 0375 or email: gabrielle.lea@lawsociety.com.au.

Yours faithfully,

Elizabeth Espinosa
President

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Public Consultation Draft – Residential Tenancies Regulation 2019

Submission by the Law Society of NSW – August 2019

NO.	QUESTIONS	COMMENTS
Part 1 – Preliminary		
Commencement date of the proposed Regulation (clause 2) and the Amendment Act		
Q.1.	Is a 2 December 2019 commencement date for the proposed Regulation and Amendment Act appropriate? If not, why?	No, industry bodies, landlords and real estate agents will need time to understand and prepare for the new tenancy agreements and condition reports. Real estate agents will also need time to obtain information from landlords about the history of a property and any material facts that may apply. In our view, a mid-2020 date would be more appropriate.
Q.2.	Is a mid-2020 date appropriate for commencement of the new minimum standards for rental properties? If not, why?	While we agree that a landlord should be given the proposed additional six-month period after the reforms commence so they may have sufficient time to make any changes to the premises, a date of mid-2020 is not appropriate given our answer in question 1. We would suggest the commencement of the new minimum standards occur on 1 December 2020.
Definitions (clause 3)		
Q.3.	Are there other terms in the proposed Regulation that should be defined so that their meaning is clear?	<ul style="list-style-type: none"> • Clause 8(b) of the Draft Regulation refers to "significant health or safety risks". This is very broad and, in our view, should be defined. • It may also be helpful to import or cross reference the definition of "dependent child" as defined in s 105B of the <i>Residential Tenancies Act 2010</i>.

NO.	QUESTIONS	COMMENTS
Part 2 – Residential tenancy agreements		
Standard form of agreement (clause 4 and Schedule 1)		
Q.4.	Does the new standard form of tenancy agreement clearly define the rights and obligations of both landlords and tenants?	Yes. However, we suggest that clause 17 be expanded to include a tenant's obligation to keep any grass in a yard or garden regularly cut and maintained.
Q.5.	Are there other ways that the standard form of tenancy agreement can be improved? If so, how?	No.
Prohibited terms (clause 5)		
Q.6.	Are there any other terms that should be prohibited from being included in a residential tenancy agreement?	No.
Q.7.	Do you agree that these terms should <u>not</u> be able to be excluded or modified by a fixed term agreement of 20 years or more?	Yes.
Q.8.	Are there other terms in the Act that should not be excluded or modified in fixed term agreements of 20 years or more?	No.
Condition reports (clause 7 and Schedule 2)		
Q.9.	Do you think that the proposed condition report is easy to use?	Yes.
Q.10.	Should any other features be included in the condition report to help accurately describe the condition of the premises?	No.

NO.	QUESTIONS	COMMENTS
Part 3 – Rights and obligations of landlords and tenants		
Disclosure of material facts to tenants (clause 8)		
Q.11.	For the material fact listed under clause 8(f), are there other ways that a landlord could become aware that the property has been used to manufacture drugs?	<ul style="list-style-type: none"> • Yes, the landlord may become aware by an inspection of the premises or being informed by a neighbour and not reported to Council or the Police. However, we understand that the disclosure is limited to the landlord being notified by the Council or Police, which is appropriate. • We note that the while the material facts in clause 8(f) are referable to receipt of a relevant notice, the material facts in other clauses, such as clauses 8(a) and 8(d) are not. Consideration should be given to these material facts similarly being referable to relevant notices, to provide more certainty to landlords and tenants.
Q.12.	Are the prescribed timeframes for disclosing each of the material facts listed under clause 8, appropriate? If not, why?	We suggest that the requirements to disclose the residential premises having been subject to flooding or bush fire within the last five years in clause 8(a) is excessive. We believe two years is sufficient and consistent with the other timeframes in this clause.
Q.13.	Are the proposed material facts listed under clause 8 too broad or too narrow? If yes, why?	Clause 8(b) refers to "significant health or safety risks" which should be clarified as noted above. We envisage there will also be instances where what may be a safety risk or health risk to a tenant may not be to a landlord or there may be something unknown to the landlord of concern to a particular tenant, for example the tenant may be allergic to something in the premises. The scope of this material fact requires further clarification.
Q.14.	Are there other types of material facts that a landlord or landlord's agent should disclose to a prospective tenant?	No.

NO.	QUESTIONS	COMMENTS
Charges payable by social housing tenants (clause 9, 10 & 11)		
Q.15.	Are clauses 9, 10 and 11 still appropriate? If so, why?	Yes, because the landlord would have incurred upfront costs in providing these facilities.
Q.16.	Are there any other charges that should apply to social housing tenants?	No.
Water efficiency measures required for usage charge payment by tenants (clause 12)		
Q.17.	Are there other water efficiency measures that should be prescribed? If so, why?	No.
Additional charges payable by landlord (clause 13)		
Q.18.	Is the newly drafted clause 13 appropriate? If not, why?	Yes, it is appropriate.
Repair and maintenance of smoke alarms (clause 14, 15 & 16 – new)		
Q.19.	Do the requirements appropriately balance tenant safety and administrative costs to landlords and agents? If not, why?	Generally, yes, but the requirement to have an alarm repaired within 72 hours may be problematic where the landlord receives notification from the tenant just before the weekend. Noting also the requirement to give the tenant at least two days' notice for access, we suggest that the timeframe in clause 15(1) should be amended to "3 business days". This would allow landlords a reasonable time to arrange for a professional tradesperson to attend and comply with access notice requirements.
Q.20.	Are there other circumstances where repairs to a smoke alarm should be carried out by a qualified professional? If so, why?	No.

NO.	QUESTIONS	COMMENTS
Q.21.	Are any of the smoke alarm repair requirements unclear? If so, why?	<ul style="list-style-type: none"> • We note that once commenced, s 64A of the <i>Residential Tenancies Act 2010</i> defines “repairs to a smoke alarm” as including replacing a battery. It may be useful to add a note at the end of clause 16 referring to this definition. • As this clause is limited to replacement of a battery, it may be clearer in clauses 16(2) and 16(3) to refer to replacement of a battery, to avoid any suggestion the tenant can do any “repair” other than replacing the battery.
Q.22.	How much notice should a tenant give a landlord to carry out repairs to a smoke alarm, given the need to repair it urgently?	See answer to 19.
Alterations of a minor nature (clause 17 – new)		
Q.23	Do you agree that the prescribed list of minor alterations is reasonable? If not, why?	Yes, but we suggest the definition of furniture in clause 17(5) should also include “beds”.
Q.24.	Do you agree with the list of alterations where consent may be conditional on having the work carried out by a qualified tradesperson? If not, why?	Yes.
Q.25	Are there other types of minor alterations that should be prescribed, including measures to further improve accessibility for elderly or disabled tenants?	No.
Q.26.	Do you agree with the list of exceptions? If not, why?	Yes.
Q.27.	Are there any other situations where clause 17 should not apply?	No.

NO.	QUESTIONS	COMMENTS
Domestic violence declaration form (clause 18 and Schedule 3)		
Q.28.	Do you have any suggestions on how the wording and layout of the declaration form could be improved?	<ul style="list-style-type: none"> • We suggest that the form should include a note or be reworded so as to make it clear that a “tenant’s dependent child” need not be a child of the tenant, but a child who is dependent upon the tenant. • The warning paragraph about false declarations may be better placed in Part 4 of the declaration. • We suggest that the note at the end of Part 3 of the declaration could be simplified.
Part 4 – Exemptions		
Q.29.	Should the exemptions provided for in clauses 19-26 continue to apply? If not, why?	Yes.
Exemption for particular providers from landlord’s information statement (clause 27 - new)		
Q.30.	Is the new exemption provided by clause 27 appropriate? If not, why?	Yes.
Social housing tenancy agreements and separately metered gas (clause 28 – new)		
Q.31.	Is the new exemption provided by clauses 28 appropriate? If not, why?	Yes.
Social housing tenancy agreements and rent increases (clause 29 - new)		
Q.32.	Is the new exemption provided by clause 29 appropriate? If not, why?	Yes.

NO.	QUESTIONS	COMMENTS
Strata scheme (clause 30 – new)		
Q.33.	Is the new exemption provided by clause 30 appropriate? If not, why?	Yes.
Social housing tenancy agreements and rectification orders (clause 31 - new)		
Q.34.	Is the exemption provided by clause 31 appropriate? If not, why?	Yes.
Part 5 – Enforcement		
Times for making applications to the Tribunal (clause 32)		
Q.35.	Are the timeframes for making applications to the Tribunal appropriate? If not, why?	<ul style="list-style-type: none"> • Generally, yes, but we suggest the time frame in clause 32(6)(c) should be 30 days. The landlord should not need three months to return the goods. • We also suggest that the timeframe in clause 32(8) should be three months not six months so that all parties are aware within a reasonable time as to what will happen with the bond. We consider that six months is too long. • Similarly, clause 32(9) should be 30 days to provide certainty within a reasonable time for the parties.
Monetary limit of jurisdiction of Tribunal (clause 33)		
Q.36.	Is the jurisdictional limit set for rental bond and other matters adequate? If not, why?	Yes.
Q.37.	Are there any unintended consequences in prescribing a cumulative amount where an order is made with respect to both a rental bond and another matter?	No.

NO.	QUESTIONS	COMMENTS
Part 6 – Miscellaneous		
Interest payable on rental bonds (clause 34)		
Q.38.	Should an interest rate on rental bonds still be prescribed? Why	Yes. We note that interest rates are historically low which may make prescribing a rate seem futile, but this will not always be the case. Interest on rental bonds should continue to be paid to tenants as it is their money. The money being held is invested and earns interest. As the money belongs to someone other than the body investing it, the body investing it should not receive a windfall.
Part 7 – Repeal, savings and transitional provisions		
Savings and transitional provisions (clauses 36-41)		
Q.39.	Are the prescribed savings and transitional provisions appropriate	Yes.
Q.40.	Are any other savings or transitional provisions required?	No.
Schedule 4 – Penalty notice offences		
Q.41.	Are the changes to penalty amounts in the proposed Regulation appropriate?	Yes, the changes reflect an attempt to categorise offences from less serious with a lesser penalty to the most serious with the higher penalties.