



## CHANGES TO THE NSW RESIDENTIAL TENANCIES ACT & REGULATIONS

*Effective from the 23<sup>rd</sup> March 2020*

**As your professional representatives in the management of your investment, it is our duty to remain entirely educated and informed of any legislative changes which may impact your investment. We understand you are busy and may not have the time to assess these changes... after all, that's why you hire us to do it for you!**

However, for our clients who prefer to evaluate the fine print, we have compiled a summary of some of the most important changes. Please rest assured that Leading Property Group is pro-actively working and training with the Real Estate Institute of NSW and The Department of Fair Trading to ensure a smooth transition and positive outcomes for all our clients.

### **Rent increases will be limited to once per year during a periodic agreement when fixed term has passed**

Section 41 of the Residential Tenancies Act sets out the requirements for rent increases. Currently the requirements for increasing the rent during a periodic (non-fixed term) lease requires: -

(a) The tenant is given written notice by the landlord or landlords agent specifying the increased rent and the day from which it is payable;

(b) The notices is given at least 60 days before the increased rent is payable.

As part of these changes a further requirement has now been added: -

(c) The rent payable under a periodic agreement may not be increased more than once in any period of 12 months.

### **Landlords must obtain tenants prior written consent to publish photographs or video recordings of premises including property interiors for advertising purposes which may show tenants possessions**

This refers to a new addition to the Act which will fall under Section 55A – Publishing photographs of residential premises with tenant's consent.

It states that "A landlord or landlord's agent must not publish any photograph taken or visual recording made of the interior of residential premises in which any of the tenant's possessions are visible without first obtaining the written consent of the tenant".

This section does not apply when photographs or visual recordings are exchanged between the landlord and the landlord's agent when they are related to routine inspections, maintenance or repairs.

*How this may affect you is if you are considering selling your investment or require updated marketing photos written consent must be obtained from the tenant.*

### **Tenants may make minor alternations, fixtures, additions and renovations with the landlords consent, but the landlord cannot unreasonable withhold consent if the alternation, fixture or addition is one from a prescribed list in the 2019 regulation**

Tenants are currently allowed to install fixtures or make alterations, additions or renovations if they have the landlord's written consent. If the tenant's request for a fixture or alteration, addition or renovation is of a 'minor nature' then the landlord must not unreasonably withhold consent.

The new Regulation now includes a list of the kinds of fixtures or alterations, additions or renovations of a 'minor nature' for which it would be unreasonable for a landlord to withhold consent. This list includes:

(a) securing furniture to a wall of premises, other than a tiled wall, if it is necessary for the safe use of the furniture,

(b) fitting a childproof latch to an exterior gate of a single dwelling,

(c) inserting fly screens on windows,

(d) installing or replacing an internal window covering,

(e) installing cleats or cord guides to secure blind or curtain cords,

(f) installing child safety gates inside the premises,

(g) installing window safety devices for child safety,

(h) installing hand-held shower heads or lever-style taps for the purpose of assisting elderly or disabled people,

(i) installing or replacing hooks, nails or screws for hanging paintings, picture frames and other similar items,



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- (j) installing a carriage service for connecting a phone line or accessing the internet and any facility or customer equipment associated with the provision of the service,
- (k) planting vegetables, flowers, herbs or shrubs if—
  - (i) existing vegetation or plants do not need to be removed, and
  - (ii) for shrubs—the shrubs will not grow to more than 2 metres in height,
- (l) installing, on the residential premises to which the residential tenancy agreement relates, a wireless removable outdoor security camera, Note. The Surveillance Devices Act 2007 regulates the installation, use and maintenance of surveillance devices.
- (m) applying shatter-resistant film to windows or glass doors,
- (n) making a modification that does not penetrate a surface, or permanently modify a surface, fixture or the structure of the premises.

The new Regulation also specifies which of those changes a landlord may require be carried out by a qualified person. Even if the fixture, alteration, addition or renovation is included in the above list, tenants are still required to get the landlord's written consent to the change. However, for changes that are on the list and not covered by an exemption, it is unreasonable for the landlord to refuse consent or place conditions on the consent.

The changes will not apply if a property is listed on the [loose-fill asbestos insulation register](#), or if the property is a heritage item. Some restrictions also apply to property in a strata scheme or in a residential land lease community.

## **Damage and removing modifications**

Tenants are still responsible for any damage they cause to the property. The existing requirements on liability for damage and removing any alterations, additions, renovations or fixtures still apply.

At the end of the tenancy, a tenant is responsible for leaving the property in the same condition as at the start of the tenancy, except fair wear and tear. This includes making sure any alterations, additions or renovations are removed and also fixing any damage caused to the property. For 'fixtures', a tenant can choose whether to remove any 'fixtures' they have installed, provided they repair or compensate the landlord for any damage caused by removing the fixture. A tenant cannot remove any fixtures if the landlord paid for them.

Landlords may apply to the NSW Civil and Administrative Tribunal (the Tribunal) to seek compensation from the tenant for the costs involved if the work is not done to a satisfactory standard, or if the work is likely to adversely affect the landlord's ability to let the premises to other tenants if it isn't corrected

## **New Smoke Alarm Obligations for Landlords**

From 23 March 2020, all NSW landlords will need to ensure that smoke alarms installed in the rented property are in working order. A penalty will apply for landlords who fail to comply.

To ensure smoke alarms installed in the rented property are in working order, a landlord must:  
carry out annual checks to ensure all smoke alarms installed at the property are in working order  
replace a removable battery in all smoke alarms in the period specified by the smoke alarm manufacturer (for a removable lithium battery), or otherwise annually repair or replace a smoke alarm that is not working within 2 days of becoming aware that it is not working  
replace a smoke alarm with a new smoke alarm within 10 years from the manufactured date, or earlier if specified by the smoke alarm manufacturer.

repairs & replacements of hardwired smoke alarms must now be carried out by an authorised electrician  
There are now further requirements with respect to notifying tenants and disclosing the detailed information regarding the smoke alarms in all condition reports & tenancy agreements.

*For this reason, it will be our strong recommendation that all landlords partake in the service program offered by Detector Inspector for the installation and servicing of smoke alarms to ensure compliance with the Act. If you are not already on this service program, further correspondence will be sent to you in due course to engage Detector Inspector.*



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## **Non-payment of water usage or utility charges may now result in tenancy termination (in addition to non-payment of rent)**

Section 88 of the Act has now been amended to allow a termination notice to be issued solely for failure to pay water usage charges or for the charges for the supply of other utility charges such as electricity, gas or oil. This notice can only be issued when the invoice remains unpaid for 14 days.

Under section 39 the tenant has 21 days from the date of invoice to pay their water usage charges. It is our understanding that the above amendment will be enforceable if the invoice remains unpaid 14 days after this due date (i.e. 35 days from date of invoice).

## **New definition for “separately metered” regarding electricity, gas & water usage charges**

A new definition for separately metered has been introduced to reduce disputes between tenants and landlords about who pays for electricity, gas or water usage charges.

The definition under the amendment states that separately metered means that there is, in respect of residential premises, a meter—

- (a) that satisfies an Australian Standard prescribed by the regulations (if any) dealing with electrical, gas, oil or water metering equipment, and
- (b) that has been installed in accordance with the manufacturer’s instructions for installation or industry practice, and
- (c) that measures the quantity of electricity, gas, oil or water that is supplied to, or used at, only those residential premises, and
- (d) that enables a separate bill to be issued by the supplier for all charges for the supply and use of the electricity, gas, oil or water at those residential premises, and
- (e) if the meter is to measure the supply of electricity—in respect of which an NMI, within the meaning of the **National Energy Retail Law (NSW)**, has been assigned, and
- (f) if the meter is to measure the supply of gas—in respect of which an MIRN or a delivery point identifier, within the meaning of the **National Energy Retail Law (NSW)**, has been assigned.

*As a result of these changes, some landlords who may charge separately for water supply by some form of metering equipment may not continue to do so unless a separate bill can be issued by the appropriate water board.*

## **Changes to water efficiency measures when charging for water usage**

For a landlord to be able to pass on water usage charges to the tenant, the residential property must be separately metered, meet the water efficiency measures, and the charges must not exceed the amount payable by the landlord (according to the water supplier’s bill or other evidence).

The new laws now include additional water efficiency measures, including that all taps and toilets on the property need to be checked at the start of a tenancy so that any leaks are fixed.

Taps and toilets must also be checked whenever any other water efficiency measures are installed, repaired or upgraded and any leaks fixed. This requirement applies to existing and new tenancy agreements from 23 March 2020.

Evidence to support water efficiency compliance must be provided to your agent as we are required to sign off on water efficiency compliance on all tenancy documents. In addition, if water usage payments are disputed by tenants we would also require documented evidence to this effect.

It is strongly recommended and best practice an appropriately licensed plumber carry out all plumbing and water efficiency works to your rental property as compliance will be noted on their invoice.

In addition to the above changes, from **23 March 2025**, all toilets in rented properties must be dual flush with a minimum 3-star rating in accordance with the Commonwealth **Water Efficiency Labelling and Standards (WELS)** scheme.



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## **New break lease fees for fixed term agreements**

New mandatory set fees will be implemented to all new fixed term tenancy agreements that are 3 years or less that have been entered into from the 23<sup>rd</sup> March 2020. These fees are payable by a tenant in the event they break their fixed term lease and vacate the property. The new break fees are: -

- 4 weeks rent if less than 25% of the lease had expired
- 3 weeks rent if 25% or more but less than 50% of the lease had expired
- 2 weeks rent if 50% or more but less than 75% of the lease had expired
- 1 week's rent if 75% or more of the lease had expired.

Using the example of a 12-month tenancy agreement, a tenant would only be required to provide two weeks' rent to their landlord (that is, an amount equal to two week's rent) to end their agreement early, if seven months (or 58%) of the agreement had expired.

As these fees are now "mandatory" this means that landlords or landlords agents cannot include their "own" break lease fee and that the compensation payable is irrespective of the costs or loss of rent the landlord may incur (with the exception of an occupation fee).

Under changes that were already implemented in 2019, victims of domestic violence will be able to terminate their tenancy without penalty. Certain forms and/or approved declarations under the Act need to be provided by the tenant in this circumstance.

## **New material facts to be disclosed**

Under the existing laws landlords or their agent are required to disclose the following material facts to the tenant if they are known to them:

- If the premises have been subject to serious flooding or bushfire in the last 5 years.
- If the premises have significant health/safety risks that are not apparent on inspection.
- If the premises have been the scene of a serious violent crime in the last 5 years (serious violent crime includes murder, manslaughter, sexual assault or aggravated assault)
- If council waste services will be different from others in the council area.
- If the property is affected by zoning or laws that will not allow you to obtain a parking permit and only paid parking is available in the area;
- If the property has been listed on the loose-fill asbestos insulation register.
- If the premises have a driveway or walkway that others can legally use.
- If the landlord proposes to sell the premises (or if they have prepared a contract for sale of the premises)
- If a mortgagee has started court proceedings to enforce a mortgage over the premises.

In addition to the above, from the 23<sup>rd</sup> March 2020 the landlord or their agent will also need to disclose if the property:

- has been used for the manufacture or cultivation of a prohibited drug or prohibited plant in the last 2 years
- is in a strata scheme where scheduled rectification work or major repairs will be carried out to common property during the fixed term of the agreement
- is part of a building to which a:
  - notice of intention to issue a fire safety order, or a fire safety order, has been issued requiring rectification of the building for external combustible cladding, or
  - notice of intention to issue a building product rectification order, or a building product rectification order, has been issued requiring rectification of the building for external combustible cladding, or
  - development application or complying certificate application has been lodged for rectification of the building for external combustible cladding.



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## **Landlords must ensure that their rental properties meet 7 minimum standards to be “fit for habitation”**

Landlords are currently required to provide their rented property in a reasonable state of cleanliness and “fit for habitation”. Under the changes, the government has introduced seven (7) minimum standards to clarify the meaning of “fit for habitation”.

These standards are:

- Structurally sound property
- Adequate natural or artificial lighting in each room, except storage rooms or garages
- Adequate ventilation
- Supplied with electricity or gas and has adequate electricity or gas outlets for lighting, heating and appliances
- Adequate plumbing and drainage
- Connected to a water supply service or infrastructure for the supply of hot and cold water for drinking, washing and cleaning
- Contains bathroom facilities, including toilet and washing facilities, which allow user privacy.

If a rented property meets the minimum standards, it does not automatically mean that it is ‘fit for habitation’, as these are baseline standards and are not a full list of whether a property is fit for habitation.

For the purpose of this section the Act has provided further clarification stipulating that the residential premises are structurally sound only if the floors, ceilings, walls, supporting structures (including foundations), doors, windows, roof, stairs, balconies, balustrades and railings:

- (a) are in a reasonable state of repair, and
- (b) with respect to the floors, ceilings, walls and supporting structures—are not subject to significant dampness, and
- (c) with respect to the roof, ceilings and windows—do not allow water penetration into the premises, and
- (d) are not liable to collapse because they are rotted or otherwise defective.

Determining whether a property is considered “structurally sound” exceeds the qualifications for that of a Property Management professional and may require further expert advice.

## **Changes to the Standard Form of Tenancy Agreement including new requirement for Landlords Information Statement to be signed**

Changes to the Standard Form of Tenancy Agreement now requires landlords or their agent to disclose further information to ensure the tenant is aware of all their requirements from the commencement of tenancy.

Some of these changes include:

- Where the tenant provided the rental bond to i.e. the landlord, the landlord’s agent, NSW Fair Trading through Rental Bonds Online.
- Is electricity / gas supplied to the premises from an embedded network?
- Is the smoke alarm hardwired or battery operated? If battery, are they of a kind the tenant can replace, if so, specify the type of battery that needs to be used if the battery requires replacing.
- If the smoke alarms are hardwired, are the back up batteries a kind the tenant can replace, if so, specify the type of battery that needs to be used if the battery requires replacing.
- If the property is strata titled, is the owners corporation of the strata scheme responsible for the repair & replacement of smoke alarms in the residential premises.
- Indicate if the landlord & tenant give express consent to the electronic service of notices & documents

The biggest change is the addition of Section 31A to the Act which is the requirement for a Landlords Information Statement as set out below:

- (1) A landlord must not enter into a residential tenancy agreement unless the landlord or the landlord’s agent has signed an acknowledgment on the residential tenancy agreement that the landlord has read and understood the contents of an information statement in the approved form that sets out the landlord’s rights and obligations under this Act and any other Act or law in relation to the proposed residential tenancy (a rights and obligations information statement).
- (2) A landlord’s agent must not sign an acknowledgment on the residential tenancy agreement unless the landlord’s agent has first obtained from the landlord a statement in writing that the landlord has read and understood the contents of the rights and obligations information statement.

*This information statement has not yet been published so we are uncertain as to the exact content of this document at this stage. However, we will obtain these signed statements from you in due course.*



## Changes to the Standard Entry Condition Report format

When entering into a new tenancy agreement the landlord or their agent are required to provide the tenant with an entry condition report. As part of these reforms there has been a significant change to the format of these reports which will require the landlord or their agent to indicate whether the property meets minimum standard requirements as set out in the report. The new Condition Report format can be found under Schedule 2 of the Residential Tenancies Regulation 2019 (NSW) and we have included the extract below that refers to the Minimum Standards. The landlord must indicate whether the following apply to the residential premises:

**Entry condition report:** 22 Dudley St, Bondi NSW 2026

### Minimum Standards

The landlord must indicate whether the following apply to the residential premises:

Are the premises structurally sound?  Yes  No

Note. Premises are structurally sound only if the  
(a) floors, ceilings, walls, supporting structures (including foundations), doors, windows, roof, stairs, balconies, balustrades and railings are (i) in a reasonable state of repair, and (ii) are not liable to collapse because they are rotted or otherwise defective, and  
(b) floors, ceiling, walls and supporting structures are not subject to significant dampness, and  
(c) roof, ceilings and windows do not allow water penetration into the premises.

Does the premises have adequate:

(a) natural or artificial lighting in each room (excluding storage rooms or garages)?  Yes  No

(b) ventilation?  Yes  No

(c) electricity outlet sockets or gas outlet sockets for the supply of lighting and heating to the premises, and for the use of appliances in the premises?  Yes  No

(d) plumbing and drainage?  Yes  No

Utilities: Are the premises:

(a) supplied with electricity?  Yes  No

(b) supplied with gas?  Yes  No

(c) connected to a water supply service or infrastructure that supplies water (including, but not limited to, a water bore or water tank) that is able to supply to the premises hot and cold water for drinking and ablution and cleaning activities?  Yes  No

Utilities: (continued)

Does the premises contain bathroom facilities, including toilet and washing facilities that allow privacy for the user?  Yes  No

Does the tenant agree with all of the above?  Yes  No

If no, specify which items:

### Health Issues

The landlord must indicate whether the following apply to the residential premises:

(a) Are there any signs of mould and dampness?  Yes  No

(b) Are there any pests and vermin?  Yes  No

(c) Has any rubbish been left on the premises?  Yes  No

(d) Are the premises listed on the Loose-Fill Asbestos Insulation Register?  Yes  No

### Smoke Alarms

The landlord must indicate the following:

Have smoke alarms been installed in the residential premises in accordance with the Environmental Planning and Assessment Act 1979 (including any regulations made under that Act)  Yes  No

Have all the smoke alarms installed on the residential premises been checked and found to be in working order?  Yes  No

Date last checked

Lessor/agent initials  Tenant/s initials    Date



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Entry condition report: 22 Dudley St, Bondi NSW 2026

### Smoke Alarms (continued)

The landlord must indicate the following:

Have the removable batteries in all the smoke alarms been replaced within the last 12 months, except for removable lithium batteries?  Yes  No  N/A

Date batteries were last changed:  /  /

Have the batteries in all the smoke alarms that have a removable lithium battery been replaced in the period specified by the manufacturer of the smoke alarm?  Yes  No  N/A

Date batteries were last changed:  /  /

Note: Section 64 A of the Residential Tenancies Act 2010 provides that repairs to a smoke alarm includes maintenance of a smoke alarm in working order by installing or replacing a battery in the smoke alarm

### Other Safety Issues

The landlord must indicate whether the following apply to the residential premises:

Are there any visible signs of damaged appliances (if appliances are included as part of the tenancy)?  Yes  No

Are there any visible hazards relating to electricity (e.g. a loose or damaged electricity outlet socket, loose wiring or sparking power points)?  Yes  No

Are there any visible hazards relating to gas (e.g. a loose or damaged gas outlet socket or an open-ended gas pipe or valve)?  Yes  No

Does the tenant agree with all of the above?  Yes  No

If no, specify which items:

Lessor/agent initials  Tenant/s initials 1  2  3  Date  /  /

### Communications Facilities

The landlord must indicate whether the following communications facilities are available:

(a) a telephone line is connected to the residential premises  Yes  No

(b) an internet line is connected to the residential premises  Yes  No

### Water Usage Charging and Efficiency Devices

Only applicable if tenant pays water usage charges for the residential premises

Are the residential premises separately metered?  Yes  No

The landlord must indicate the following:

(a) all showerheads have a maximum flow rate of 9 litres per minute  Yes  No

(b) on and from 23 March 2025, all toilets are dual flush toilets with a minimum 3 star rating in accordance with the WELS scheme  Yes  No  N/A

(c) all internal cold water taps and single mixer taps in kitchen sinks or bathroom handbasins have a maximum flow rate of 9 litres per minute  Yes  No

(d) the premises have been checked and any leaking taps or toilets on the residential premises have been fixed  Yes  No

Date the premises were last checked to see if it is compliant with the water efficiency measures:  /  /

Water meter reading at START of tenancy: Lph  0387362

Date of reading:  /  /

Water meter reading at END of tenancy: Lph

Date of reading:  /  /

Entry condition report: 22 Dudley St, Bondi NSW 2026

### Additional comments

Additional comments on minimum standards, health issues, smoke alarms, other safety issues, communication facilities, water usage charging and efficiency devices. (May be added by landlord or tenant, or both)

### Landlord's promise to undertake work: [Delete if not required]

The landlord agrees to undertake the following cleaning, repairs, additions or other work during the tenancy:

The landlord agrees to complete that work by:  /  /

Landlord/agent's signature  Date

Print name

Note. Further items and comments may be added on additional pages signed by the landlord / agent and the tenant and attached to this report.

### Approximate dates when work last done on residential premises

Installation, repair or maintenance of smoke alarms  /  /

Painting of premises (external)  /  /

Painting of premises (internal)  /  /

Floor laid / replaced / cleaned  /  /

Lessor/agent initials  Tenant/s initials 1  2  3  Date  /  /