

# Changes to the residential tenancy laws

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New residential tenancy laws started on 23 March 2020.

## Evictions during COVID-19

Changes to the residential tenancy laws started on 23 March 2020, with amendments to the Residential Tenancies Act 2010 (the Act) and the new Residential Tenancies Regulation 2019 (the new Regulation).

## What are the changes?

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The changes improve tenants' renting experience while ensuring landlords can effectively manage their properties. The changes aim to reduce disputes over repairs and maintenance, increase protection and certainty for tenants, and clarify the rights and obligations of tenants and landlords.

The following information highlights the key changes that started on 23 March 2020. You can read through all or click on the ones that interest you.

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## Minimum standards to clarify 'fit for habitation'

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Landlords are currently required to provide the rented property in a reasonable state of cleanliness and 'fit for habitation'. The changes introduce seven minimum standards which clarify what 'fit for habitation' means.

The minimum standards set clearer expectations for landlords and tenants and will apply to all rented properties. To be fit to live in, the property must (as a minimum):

1. be structurally sound
2. have adequate natural or artificial lighting in each room, except storage rooms or garages
3. have adequate ventilation
4. be supplied with electricity or gas, and have enough electricity or gas sockets for lighting, heating and other appliances
5. have adequate plumbing and drainage
6. have a water connection that can supply hot and cold water for drinking, washing and cleaning
7. have bathroom facilities, including toilet and washing facilities that allow users' privacy.

Landlords need to ensure their rented properties meet the minimum standards to be fit for habitation. Rented properties are already required to be fit for habitation and should already meet these basic standards.

The property could have other issues that may make it unfit for a tenant to live in, even if it meets the above seven minimum standards. Before the property is rented out, the landlord or agent should take steps (such as make repairs) to make sure the property is fit to live in.

These standards must be maintained throughout the tenancy (by making repairs).

## New smoke alarm obligations for landlords

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Landlords 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.

The details on when a landlord must repair or replace a battery-operated or hardwired smoke alarm, and when a tenant may repair or replace a smoke alarm, is in the new Regulation. The provisions allowing landlords to enter the property without consent have been extended to specifically include inspecting or assessing the need for repairs to, or replacement of, a smoke alarm if proper notice has been given to the tenant.

## Information for landlords

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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 two 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.

### More information

Visit the [Key changes to smoke alarm requirements for rented homes](#) page to read more on who can repair or replace a smoke alarm or change a battery in a tenancy.

## Information for tenants

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Tenants need to notify the landlord if a repair or a replacement to a smoke alarm is required, including replacing a battery in a smoke alarm.

A tenant can choose to replace a removable battery in a smoke alarm, but they need to notify the landlord if and when they do this. A tenant may only repair or replace a smoke alarm if the landlord does not repair or replace a smoke alarm within the prescribed time (as detailed above). Tenants are entitled to reimbursement for the costs of a repair or replacement of a smoke alarm if they provide appropriate evidence. These provisions do not apply to social housing tenants.

## Changes of a 'minor nature'

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Tenants can install fixtures or make alterations, additions or renovations if they have the landlord's written consent, or if the tenancy agreement permits it. 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 tenant must pay for the fixture they install or for any alteration, renovation or addition to the property that they make, unless the landlord agrees otherwise.

The new Regulation lists the kinds of fixtures or alterations, additions or renovations that are minor where it would be unreasonable for the landlord to say no:

- a. securing furniture to a non-tiled wall for safety reasons
- b. fitting a childproof latch to an outdoor gate of a single dwelling
- c. inserting fly screens on windows
- d. installing or replacing an internal window covering e.g. curtains and removable blinds
- e. installing cleats or cord guides to secure blind or curtain cords
- f. installing child safety gates inside the property
- g. installing window safety devices for child safety

- h. installing hand-held shower heads or lever-style taps to assist elderly or disabled occupants
- i. installing or replacing hooks, nails or screws for hanging paintings, picture frames and other similar items
- j. installing phone line or internet connection
- k. planting vegetables, flowers, herbs or shrubs (shrubs that don't grow more than two metres) in the garden if existing vegetation or plants do not need to be removed
- l. installing a wireless removable outdoor security camera
- m. applying shatter-resistant film to window or glass doors
- n. making modifications that don't penetrate a surface, or permanently modify a surface, fixture or structure of the property.

The new Regulation also specifies that a landlord may require that the following changes be carried out by a qualified person:

- installing hand-held shower heads or lever-style taps to assist elderly or disabled occupants
- installing a phone line or internet connection

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

Even if the fixture, alteration, addition or renovation is included in the above list, tenants must still get the landlord's written permission. 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.

## **Damage and removing modifications**

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Tenants are responsible for any damage they cause to the property.

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. 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 mandatory set break fees for fixed term agreements

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Landlords may apply to the [NSW Civil and Administrative Tribunal](#) (the Tribunal) for 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 rent the property to other tenants if it isn't corrected.

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

Mandatory fees apply to all fixed-term agreements of three years or less, when a tenant ends the agreement early. This applies to agreements that are entered into from 23 March 2020 onwards.

The break fees are:

- four weeks rent if less than 25 per cent of the agreement has expired
- three weeks rent if 25 per cent or more but less than 50 per cent of the agreement has expired
- two weeks rent if 50 per cent or more but less than 75 per cent of the agreement has expired
- one week's rent if 75 per cent or more of the agreement has expired.

For example:

- if seven months of a 12-month tenancy agreement (or 58 per cent) has expired, a tenant would need to pay a fee equal to two weeks rent to the landlord to end the agreement early
- if two months of a six month tenancy agreement (or 33 per cent) has expired, the tenant would need to pay a fee equal to three weeks rent to the landlord to end their agreement early.

## Strengthened information disclosure requirements

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A landlord or agent must not make false or misleading statements or knowingly conceal certain material facts from a prospective tenant before they sign an agreement. The list of material facts is available in the [Tenant Information Statement](#) that a landlord or agent must give a tenant before entering into a tenancy agreement.

Before signing an agreement, a landlord or agent must also tell a tenant of any proposal to sell the property if the landlord has prepared a contract for sale, or if a mortgagee (i.e. bank or other lender) is taking court action for possession of the property.

The list of material facts and information that prospective tenants must be told before entering into an agreement has been expanded. The changes also provide a remedy for tenants when material facts and information are not disclosed. The changes recognise the potential hardship tenants face if they are not provided with important information about a tenancy.

## **New material facts**

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New material facts have been added, including that a landlord or agent needs to disclose if the property:

- has been used to manufacture or grow a prohibited drug or prohibited plant in the last two years
- is in a strata scheme where scheduled rectification work or major repairs will be done to common property during the fixed term of the agreement
- is part of a building to where a:
  - fire safety or building product rectification order (or a notice of intention to issue one of these orders) has been issued for external combustible cladding
  - development or complying development certificate application for rectification has been lodged for external combustible cladding

## **New information to be disclosed to prospective strata tenants**

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Before a tenancy agreement is signed, a landlord or agent needs to give a tenant a copy of the strata scheme's by-laws. They also need to inform the tenant if a strata renewal committee is currently established for the scheme. These changes provide greater protection for prospective strata tenants and are additional requirements to the general disclosure obligations.

## **Remedies for tenants for breaches to information disclosure obligations**

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A tenant is able to end their tenancy agreement by giving at least 14 days' notice if the landlord or agent fails to comply with any of the information disclosure obligations. A tenant can also apply to the Tribunal for an order to end the tenancy. The Tribunal also has the discretion to order the landlord to compensate the tenant for any costs incurred as a result of ending the tenancy agreement.

## **Additional water efficiency measures**

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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 changes provide 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.

From 23 March 2025, all toilets in rented properties must be dual flush with a minimum three-star rating in accordance with the Commonwealth [Water Efficiency Labelling and Standards \(WELS\)](#) scheme. The WELS scheme uses a rating system to help consumers make informed choices about the water efficiency of products they buy.

Landlords who intend to replace or upgrade existing toilets in their property should consider installing dual flush toilets with a minimum three-star WELS rating to meet the water efficiency requirements by 23 March 2025.

## New rectification order process

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NSW Fair Trading now has powers to resolve disputes between tenants and landlords over repairs and maintenance and property damage. This includes the ability to issue rectification orders. The rectification order process supports tenants and landlords to resolve disputes about property repairs and damage in a tenancy by working with Fair Trading.

Landlords can apply to Fair Trading to investigate whether a tenant has caused or allowed damage to the property and has refused or failed to repair, or not satisfactorily repaired, the damage without a reasonable excuse.

Tenants can apply to Fair Trading to investigate whether the landlord has failed to provide and maintain the property in a reasonable state of repair.

A landlord or tenant must first make a written request to the other party to try and resolve the issue and can then apply to Fair Trading through the complaints and dispute resolution process if the issue is not resolved.

## New standard form of agreement

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The standard form of agreement has been updated to reflect the rights and obligations between landlords and tenants under the new laws.

The changes aim to increase transparency between landlords and tenants about their rights and obligations and information relevant to the rented property.

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Other improvements to the standard form of agreement include:

- an option for a five-year fixed term to encourage landlords and tenants to consider longer fixed-term agreements
- a checkbox for landlords to indicate whether electricity or gas is supplied to the property from an embedded network
- an option to allow landlords and tenants to opt into receiving or sending notices and other documents by email
- new terms requiring the landlord to advise the tenant in writing within 14 days of becoming aware of the fact that the property:
  - is subject to a significant health or safety risk and the nature of the risk
  - is part of a building where a development application or complying development certificate application for rectification has been lodged regarding external combustible cladding
  - is part of a building where a fire safety order or a building product rectification order (or a notice of intention to issue one of these orders) has been issued regarding external combustible cladding
- a new term for landlords to allow a tradesperson to enter the property to carry out maintenance or repairs needed to avoid health or safety risks to any person, or to avoid a risk that water, utilities or other services may be disconnected.

The new standard form of agreement is in the new Regulation and must be used from 23 March 2020 onwards.

## New condition report

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The condition report has been updated to reflect the new laws, including the minimum standards and smoke alarm requirements.

The requirements around condition reports have also been improved by:

- allowing a condition report to be provided to tenants electronically
- introducing a penalty if a landlord or agent does not provide a tenant with two hard copies or one electronic copy of the completed property condition report at the start of the tenancy
- providing that tenants complete and return the condition report within seven days of taking possession of the property (instead of from when they receive the condition report), but only if the tenant has received the condition report.

The new form of condition report is available in the new Regulation and must be used from 23 March 2020 onwards.

## New Landlord information statement

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Landlords are now required to read and understand the contents of the [Landlord information statement](#) which sets out their rights and responsibilities as a landlord.

Landlords cannot enter into a tenancy agreement unless they or their agent acknowledges in the tenancy agreement that the landlord has read and understood the Landlord information statement.

## Other changes

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- rent increases for periodic (continuing) agreements will be limited to once every 12 months
- removing the requirement for landlords to provide 60 days' written notice of a rent increase for fixed-term agreements of less than two years if the increase is set out in the agreement
- a new definition for **separately metered** to reduce disputes between tenants and landlords about who pays for electricity, gas or water usage charges. A few exceptions apply where the definition does not have to be strictly met because of different metering requirements
- changes to make it easier for tenants to get repair orders from the Tribunal
- clarifying the rules around accessing the property to take photos or videos to advertise the property for sale or re-lease and when the photos or videos can be published where the tenant's belongings are visible
- ensuring tenants can access their own personal information held on tenancy databases, without being charged a fee
- providing that the following mandatory terms cannot be modified or excluded from fixed-term tenancy agreements of 20 years or more (applies to existing and new agreements from 23 March 2020 onwards):
  - smoke alarm repairs or replacement
  - property damage caused by a domestic violence perpetrator during the commission of a domestic violence offence
- prohibiting a term from being included in the agreement that requires a tenant to use a specific utility provider if there is no restriction on the landlord to use a specific utility provider (applies to new agreements from 23 March 2020)
- introducing new grounds for tenants to end their fixed-term agreement early without penalty by giving 14 days' notice, if the property is listed on the [loose-fill asbestos insulation register](#) during the tenancy

- extending the continuation guarantee (or the so called 'pay-to-stay') provisions that apply to tenants in rent arrears to also cover arrears for water usage or utility charges. This change means:
  - landlords need to issue a termination notice for the non-payment of water usage charges or utility charges after the tenant falls 14 days in arrears for paying those charges (i.e. where the landlord is billed for the charges by the supplier)
  - if the tribunal makes a termination order and warrant for possession for non-payment of water usage charges or utility charges, the order does not apply if the tenant pays all the amount owing before the order is executed. The Tribunal can make a termination order even if the tenant pays the water usage charges they owe only if the Tribunal is satisfied that the tenant has 'frequently' failed to pay for water usage charges.
- extending the purposes for which Rental Bond Interest Account money can be used (i.e. for other consumer protection purposes)
- allowing rent receipts to be sent by email
- reducing the minimum notice period to 28 days for the termination of an employee or caretaker residential tenancy agreement (e.g. farm hands who live on the property) during the periodic term
- introducing a requirement for landlords to pay for repair, maintenance or other work needed for the installation or replacement of an electricity meter (including an advanced meter) where the meter is either:
  - faulty
  - needs to be replaced as testing indicates it may become faulty
  - has reached the end of its life
- new exemptions or exceptions relating to social housing tenancies.

## When will the new laws start?

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The changes started on 23 March 2020.

## Do the laws apply to existing residential tenancies?

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Yes, the changes apply to existing residential tenancies. However, some of the new laws will not apply to existing agreements entered into before 23 March 2020. For example:

- new mandatory break fees only apply to new fixed-term agreements that are three years or less
- new landlord information statement requirements only apply when entering into a new tenancy agreement
- new requirements around condition reports apply when the tenancy agreement is given to the tenant for signing
- new information disclosure obligations apply before entering into a new tenancy agreement.

## Background to the changes

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A statutory review of the *Residential Tenancies Act 2010* (the Act) was undertaken during 2015-2016 and a report on the statutory review was tabled in Parliament on 23 June 2016. The report made 27 recommendations to modernise and improve the Act.

On 17 October 2018, the NSW Parliament passed the *Residential Tenancies Amendment (Review) Act 2018* (the Amendment Act), which introduced a range of reforms and improvements to the Act. The Amendment Act implements the majority of the recommendations of the statutory review, and other reforms aimed at improving the renting experience.

On 28 February 2019, the [domestic violence related provisions](#) started.

During 2019, a new Regulation was developed to allow the reforms to take effect, implement some of the remaining recommendations in the report on the statutory review and to replace the current Regulation.

The changes follow an extensive review and public consultation on the Act, as well as consultation on the draft Regulation.

On 23 March 2020, the Residential Tenancies Amendment (Review) Act 2018 and the Residential Tenancies Regulation 2019 commenced.

## More information

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Visit the NSW Legislation website to read the laws in full:

- [Residential Tenancies Amendment \(Review\) Act 2018](#)
- [Residential Tenancies Regulation 2019](#)

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