



**public interest**  
ADVOCACY CENTRE

**Submission to the Review of the *Residential  
Tenancies Regulation***

**2 August 2019**

## About the Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit legal centre based in Sydney.

Established in 1982, PIAC tackles barriers to justice and fairness experienced by people who are vulnerable or facing disadvantage. We ensure basic rights are enjoyed across the community through legal assistance and strategic litigation, public policy development and communication.

PIAC's Homeless Persons' Legal Service (HPLS) provides legal assistance to people who are homeless or at risk of homelessness in Sydney and the Hunter Valley. We also convene the consumer advisory committee StreetCare, whose members have lived experience of homelessness. With support from PIAC, StreetCare provides direct input from people with a lived experience into government policy making and law reform initiatives, to tackle the structural determinants of homelessness.

PIAC's Energy and Water Consumers' Advocacy Program (EWCAP) represents the interests of low income and other residential consumers of electricity, gas and water in New South Wales. The program develops policy and advocates in the interests of low-income and other residential consumers in the NSW energy and water markets. PIAC receives input from a community-based reference group whose members include:

- NSW Council of Social Service;
- Ethnic Communities Council NSW;
- Physical Disability Council NSW;
- St Vincent de Paul NSW;
- Affiliated Residential Park Association NSW; and
- the Tenants' Union of NSW.

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Public Interest Advocacy Centre



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The Public Interest Advocacy Centre office is located on the land of the Gadigal of the Eora Nation.

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## Introduction and context

This submission draws on the experience of two projects of the Public Interest Advocacy Centre (PIAC). The Homeless Persons' Legal Service (HPLS) regularly advocates on behalf of tenants who are at risk of homelessness and individuals currently experiencing homelessness who are seeking to re-enter a tenancy. The Energy and Water Consumer Advocacy Program (EWCAP) has deep expertise in the protection of consumers in water and electricity markets. Reflecting this expertise, our comments focus on the impact of the proposed Regulation on tenants, with a particular focus on improving outcomes for disadvantaged tenants.

We welcome the opportunity to comment on the proposed Regulation in the context of the recently announced Premier's Priorities, especially the key priority of breaking the cycle of disadvantage. In our experience, access to an appropriate, secure place to call home is a critical factor in personal well-being and in building a strong community.

This submission draws on our knowledge of consumer markets in the utilities sector, the experiences of clients of our legal practice, consumer input from people with lived experience of homelessness, and our own experiences as policy advocates and legal practitioners. We have also had the benefit of reviewing a draft submission prepared by the NSW Tenants' Union and support that submission.

We support implementation of the proposed Regulation (option 2 in the *Regulatory Impact Statement*) and make some recommendations to strengthen the protections it affords the most vulnerable members of our community. In particular, we highlight blanket 'no pets' terms and terms that have the effect of proscribing tenants use a specified utility service provider should be prohibited; tenants should not be required to hand over unspecified renewable energy rebates to landlords without knowing their value or the value of the solar hot water system; and clauses that put social housing tenants at an unfair disadvantage relative to other types of tenants should be removed.

Our comments and recommendations on the proposed Regulation are detailed in the table below.

## Comments on the proposed *Residential Tenancies Regulation 2019*

Question	PIAC Response	Recommendations
Preliminary		
1. Is a 2 December 2019 commencement date or the proposed Regulation and Amendment Act appropriate? If not, why?	This commencement date is appropriate. We support comments from the Tenants' Union that it will be important to allow sufficient time for the Tenants' Advice and Advocacy Services to update online legal information material.	

Question	PIAC Response	Recommendations
2. Is a mid-2020 date appropriate or commencement of the new minimum standards for rental properties? If not, why?	These standards should come into effect on the same date as commencement, ideally on 2 December 2019. The amendments have been known to the public since passing Parliament in October 2018 and a delayed start date may create confusion.	The minimum standards should commence on the same date as the proposed Regulation and Amendment Act.
<b>Part 2 Residential tenancy agreements</b>		
3. Are there other terms in the proposed Regulation that should be defined so that their meaning is more clear?	Note comments below.	
4. Does the new standard form of tenancy agreement clearly define the rights of both landlords and tenants?	Note comments below.	
5. Are there other ways that the standard form of tenancy agreement can be improved? If so, how?	<p>The standard form agreement should not include a default additional term prohibiting pets. As noted by the Tenants' Union, this is not in keeping with modern community standards and is not required by the <i>Residential Tenancies Act</i>.</p> <p>We further note that a default assumption against the keeping of pets can make it very difficult for vulnerable pet owners to secure tenancies, given their options in the private rental market are already severely constrained due to cost. Pets can be a crucial source of emotional and personal support. In our experience, people who become homeless while caring for pets are at risk of becoming chronically homelessness.</p>	<p>The additional terms in clauses 51–52 should be removed from the standard form agreement.</p> <p>The alternative additional term proposed by the Tenants' Union should be adopted.</p>
6. Are there any other terms that should be prohibited	Blanket 'no pet' terms should be prohibited.	Blanket 'no pets' terms and terms that have the effect of

Question	PIAC Response	Recommendations
from being included in a residential tenancy agreement?	Tenants may be pressured by landlords to use the services of nominated utility services providers. We believe this limits tenants' access to competition and choice as provided through the <i>Competition and Consumer Act 2010</i> (Cth), and/or has the potential to substantially limit or waive their rights in relation to standards or guarantees available to other consumers.	proscribing tenants use a specified utility service provider should be prohibited.
7. Do you agree that these terms should not be able to be excluded or modified by a fixed term agreement of 20 years or more?	Yes.	
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.	
9. Do you think that the proposed condition report is easy to use?	Yes.	
10. Should any other features be included in the condition report to help accurately describe the condition of the premises?	Photographs should be included in the condition report.	
<b>Part 3 Rights and obligations of landlords and tenants</b>		
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?	Unclear.	
12. Are the prescribed timeframes for disclosing each of the material facts listed under clause 8 appropriate? If not, why?	We agree that the disclosure period should be a uniform 5 years for all of the material facts listed under Clause 8.	
13. Are the proposed material facts listed under clause 8	See comments on question 14 below.	

Question	PIAC Response	Recommendations
too broad or too narrow? If yes, why?		
14. Are there other types of material facts that a landlord or landlord's agent should disclose to a prospective tenant?	We agree that an additional material fact should be added to cover whether the residential premises have been the subject of a rectification order.	
15. Are clauses 9, 10 and 11 still appropriate? If so why?	<p>Clauses 9 and 10 are not appropriate.</p> <p>The entitlements and purpose of the renewable energy rebate mentioned in clause 9 are unclear and could be subject to change. Furthermore, tenants may not be aware of the value of a rebate compared to the value of the solar hot water panels.</p>	<p>Clauses 9 and 10 should be deleted.</p> <p>If clause 9 is retained, it should be amended so the tenant is not required to transfer entitlements of a rebate without knowing its benefit. For example, the tenant should be given a statement detailing the expected benefit of the solar hot water panels without the renewable energy rebate before being asked to agree to pay the landlord the amount of the rebate.</p>
16. Are there any other charges that should apply to social housing tenants?	No.	
17. Are there other water efficiency measures that should be prescribed? If so, why?	We agree with the Tenants' Union recommendation to expand the list of efficiency measures to include a requirement to include dual flush toilets, and to ensure hot water systems are in good repair and operate at an adequate standard which does not lead to excessive energy or water consumption.	Expand the list of efficiency measures to include a requirement to include dual flush toilets, and to ensure hot water systems are in good repair and operate at an adequate standard which does not lead to excessive energy or water consumption.
18. Is the newly drafted clause 13 appropriate? If not, why?	Yes.	
19. Do the requirements appropriately balance tenant safety and administrative costs to	Yes.	



Question	PIAC Response	Recommendations
landlords and agents? If not, why?		
20. Are there other circumstances where repairs to a smoke alarm should be carried out by a qualified professional? If so, why?	We agree with the Tenants' Union that there be a requirement for smoke alarms to be checked by a qualified professional for general maintenance to ensure they are functioning at the recommended standard.	
21. Are any of the smoke alarm repair requirements unclear? If so, why?	No.	
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?	No notice should be required to be given, considering the urgency of undertaking such repairs.	
23. Do you agree that the prescribed list of minor alterations is reasonable? If not, why?	<p>The Regulation should clarify that the list is not exhaustive, and that the Tribunal retains discretion to determine whether a proposed alteration might be considered minor.</p> <p>We note that sub clauses (1)(d), (f) and (i) refer to matters that fall within the landlord's obligation to maintain the premises in a reasonable state of repair.</p>	<p>Clause 17 should be reworded to clarify that the list of alterations may include, but is not limited to, the specified alterations.</p> <p>Subclause 17(1)(f) should be deleted.</p> <p>Subclauses 17(1)(d) and (i) should be amended by removing the words 'or replacing'.</p>
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.	
25. Are there other types of minor alterations that should be prescribed, including measures to further improve accessibility for elderly or disabled tenants?	See Tenants Union's recommendations about accessibility and energy efficiency.	

Question	PIAC Response	Recommendations
26. Do you agree with the list of exceptions? If not, why?	No blanket exceptions should apply. We are particularly concerned about the exemption of social housing tenancies from the benefit of subclause 17(1)(k), given that many social housing tenants have legitimate concerns about their safety and security. Such concerns can pose a barrier to sustaining tenancies, and are of a particular concern for individuals who have experienced trauma such as domestic violence, and who may continue to have rational fears about security.	Subclauses 17(3)–(4) should be deleted.
27. Are there any other situations where clause 17 should not apply?	No.	
28. Do you have any suggestions on how the wording and layout of the declaration form could be improved.	No.	
<b>Part 4 Exemptions</b>		
29. Should the exemptions provided for in clauses 19–26 continue to apply? If not, why?	In our view the exemption for residential colleges and halls of residence in clause 25 should be deleted. As the Tenants' Union notes, students including international students have been found to be especially vulnerable to deceptive and exploitative conduct by unscrupulous landlords, and students should be afforded the same protections as other tenants.	Clause 25 should be deleted.
30. Is the new exemption provided by clause 27 appropriate? If not, why?	No. As noted in the RIS, there is no significant administrative cost to implementing the the information statement. Social housing tenants should have the same rights as tenants in the private rental market.	Clause 27 should be deleted.

Question	PIAC Response	Recommendations
31. Is the new exemption provided by clause 28 appropriate? If not, why?	No. There is no sound reason for the inclusion of this provision, and it would have the effect of further disadvantaging people in social housing tenants. As the Tenants' Union notes, common hot water systems are often inefficient and costly. Exempting landlords from this section places the costs of inefficient systems on tenants who have no capacity to upgrade systems.	Clause 28 should be deleted. If it is not, agree with the Tenants' Union recommendation that clause (1)(d) be amended to ensure a minimum level of efficiency - no less than 50% - before the charges can be passed on.
32. Is the new exemption provided by clause 29 appropriate? If not, why?	No.	Clause 29 should be removed.
33. Is the new exemption provided by clause 30 appropriate? If not, why?	The exemption provided by clause 30 should be amended by a condition that the landlord inform the owners' corporation of the work required, and taking all necessary steps to ensure rectification in an appropriately timely manner once notified of the need for repair by the tenant.	
34. Is the exemption provided by clause 31 appropriate? If not, why?	No. Basic repair and maintenance issues are often not performed by social housing providers and, in the absence of an operationalised rectification orders system, there is no other mechanism for tenants in social housing to resolve repairs issues. We note the Housing Appeals Committee does not have the power to order repairs. This exemption would place social housing tenants in a position in which they effectively have no remedy for issues that might seriously impact their capacity to remain in tenancies.	Clause 31 should be deleted.
<b>Part 5 Enforcement</b>		
35. Are the timeframes for making applications to the	Yes.	

Question	PIAC Response	Recommendations
Tribunal appropriate? If not, why?		
36. Is the jurisdictional limit set for rental bond and other matters adequate? If not, why?	The proposed increase is excessive – see our response to 37 below.	
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?	We agree with the Tenants' Union that the jurisdictional limit be set at no more than \$20,000 for claims other than bonds, and remain at \$30,000 for bonds claims. There is no clear rationale for the very significant increase in limits that is proposed. In matters involving higher sums of money, parties are more likely to require legal representation to avoid significant financial detriment, and it is appropriate that the rules of evidence should apply. In our view, it is appropriate that matters dealing with larger sums of money be dealt with in the General Division of the Local Court.	The jurisdictional limit should be set at no more than \$20,000 for claims other than bonds, and remain at \$30,000 for bonds claims.
<b>Part 6 Miscellaneous</b>		
38. Should an interest rate on rental bonds still be prescribed? Why?	Yes.	
<b>Part 7 Repeal, savings and transitional provisions</b>		
39. Are the prescribed savings and transitional provisions adequate?	Yes.	
40. Are any other savings or transitional provisions required?	No.	
<b>Schedule 4 Penalty notice offences</b>		
41. Are the changes to penalty amounts in the proposed Regulation appropriate?	The penalty notice and maximum penalty should be harmonised, so that penalty notices are uniformly 50% of the maximum penalty.	

## Summary of recommendations

A summary of PIAC's recommendations can be seen below.

1. The minimum standards should commence on the same date as the proposed Regulation and Amendment Act.
2. The additional terms in clauses 51–52 should be removed from the standard form agreement. The alternative additional term proposed by the Tenants' Union should be adopted.
3. Blanket 'no pets' terms and terms that have the effect of proscribing tenants use a specified utility service provider should be prohibited.
4. Clauses 9 and 10 should be deleted. If clause 9 is retained, it should be amended so the tenant is not required to hand over the entitlements of a rebate without knowing its benefit. For example, the tenant should be given a statement detailing the expected benefit of the solar hot water panels without renewable energy rebate before being asked to agree to pay the landlord the amount of the rebate.
5. Expand the list of efficiency measures to include a requirement to include dual flush toilets, and to ensure hot water systems are in good repair and operate at an adequate standard which does not lead to excessive water consumption.
6. Clause 17 should be reworded clarify that the list of alterations may include, but are not limited to, the specified alterations.
7. Subclause 17(1)(f) should be deleted.
8. Subclauses 17(1)(d) and (i) should be amended by removing the words 'or replacing'.
9. Subclauses 17(3)–(4) should be deleted.
10. Clause 25 should be deleted
11. Clause 27 should be deleted.
12. Clause 28 should be deleted. If it is not, we recommend clause (1)(d) be amended to ensure a minimum level of efficiency - no less than 50% - before the charges can be passed on.
13. Clause 29 should be deleted.
14. Clause 31 should be deleted.
15. The jurisdictional limit should be set at no more than \$20,000 for claims other than bonds, and remain at \$30,000 for bonds claims.

### Continued engagement

PIAC would welcome the opportunity to meet with the AEMC and other stakeholders to discuss these issues in more depth.