



# Issues Paper

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Statutory review of the domestic violence provisions in  
the *Residential Tenancies Act 2010* - October 2022

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## Introduction

Domestic and family violence affects the physical, psychological, and social health of many people in New South Wales. Women and children, as well as men, can be victims of domestic and family violence.

Data from the Australian Bureau of Statistics 2016 Personal Safety Survey highlights that, from the age of 15, approximately 1 in 6 women and 1 in 16 men had experienced physical or sexual violence by a current or previous partner.<sup>1</sup>

It's usually a man who is violent towards a woman he's in a relationship with, but domestic and family violence can be between<sup>2</sup>:

- married and de facto couples
- separated or divorced couples
- former partners and exes
- boyfriends and girlfriends
- LGBTIQA+ (lesbian, gay, bisexual, transgender, intersex, queer/questioning, asexual) couples
- carers
- relatives
- long-term residents in a residential facility, such as a retirement village
- extended family or kin in Aboriginal communities.

In NSW, most domestic assault victims who reported to NSW Police were female and most domestic assault offenders were male. Women were the victims of sexual assault at 4.9 times the rate of men, making up 83% of recorded sexual assault victims in 2021.<sup>3</sup>

These numbers only reflect victims who have come to the attention of the NSW Police Force, either because they reported a crime against them, or the crime was otherwise detected. We know that many domestic and family violence assaults go unreported.<sup>4</sup>

## Purpose of this Issues Paper

This issues paper seeks feedback from any member of the public interested in the operation of the domestic violence provisions in the New South Wales *Residential Tenancies Act 2010* (the **Act**).

New tenancy laws were introduced on 28 February 2019 to strengthen protections for tenants who are victims of domestic violence in New South Wales. These changes enable victims of domestic violence to take direct and immediate action to end their fixed-term or periodic tenancy to escape violence, without penalty, if they or their child is experiencing domestic violence.

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<sup>1</sup> Australian Bureau of Statistics (Released 8/11/2017), *Personal Safety, Australia* (<https://www.abs.gov.au/statistics/people/crime-and-justice/personal-safety-australia/latest-release>), accessed 16/5/2022.

<sup>2</sup> Department of Communities and Justice 'What is domestic and family violence?' (<https://www.facs.nsw.gov.au/domestic-violence/about/what-is-dv>). Accessed 16/5/22.

<sup>3</sup> NSW Gender Equality Dashboard – Domestic, family and sexual violence incidents. (<https://public.tableau.com/app/profile/women.nsw/viz/SafetyfromDFSV/Dashboard1>). Accessed 16/5/22.

<sup>4</sup> Department of Communities and Justice 'What is domestic and family violence?' (<https://www.facs.nsw.gov.au/domestic-violence/about/what-is-dv>). Accessed 16/5/22.

A statutory review of these domestic violence provisions is required by section 105I of the Act. The review will:

- assess whether the domestic violence provisions in the Act have in practice provided the enhanced protections intended for victims of domestic violence
- determine if any changes are needed to improve the reforms or better protect victims of domestic violence.

The review will consider:

- are the laws working?
- are victims of domestic violence using the laws?
- are there particular issues about the operation of the provisions that have arisen for victim-survivors from vulnerable communities, including:
  - Aboriginal and Torres Strait Islander people
  - young people
  - older people
  - people with a disability
  - people from culturally and linguistically diverse backgrounds, and
  - people from LGBTIQ+ communities?
- what have landlords and agents experienced with the laws?
- do we need to make changes to better protect victims of domestic violence when terminating a tenancy?
- do we need to make any other changes to the laws, including changes to improve their operation or impact?

The Department of Customer Service is conducting the review and will consider carefully all feedback received during the review. Submissions from the consultation will be used to inform a report on the outcome of the review and develop any recommendations.

## Have your say

We invite you to read this paper and comment on the matters that interest you or the operation of any of the provisions.

You can provide feedback in one of three ways:

- complete a survey or upload a submission for this consultation at [www.haveyoursay.nsw.gov.au/dv-rental-laws-review](http://www.haveyoursay.nsw.gov.au/dv-rental-laws-review)
- by email to [dvreview@customerservice.nsw.gov.au](mailto:dvreview@customerservice.nsw.gov.au)
- by post to:

Residential Tenancies - Domestic Violence Provisions Statutory Review  
Policy & Strategy, Better Regulation Division  
Department of Customer Service  
4 Parramatta Square  
12 Darcy Street  
Parramatta NSW 2150

**Submissions are open until Friday, 2 December 2022.**

We would prefer to receive your submission using the online options on the Have Your Say consultation website, or by email in an accessible format. Accessibility is about making documents easily available to all members of the public, including those who have an impairment (such as visual, physical or cognitive). Further information on how you can make your submission accessible is contained at <http://webaim.org/techniques/word/>.

The NSW Government's Guide to Better Regulation, which sets out how to apply the seven Better Regulation Principles to regulatory proposals, may assist you in considering the issues and preparing a submission. The Guide is available at: <https://www.treasury.nsw.gov.au/finance-resource/best-practice-regulation-guidelines>.

### **Important note: publication of submissions**

Submissions may be made publicly available. If you do not want your personal details or any part of your submission published, please indicate this clearly in your submission. Automatically generated confidentiality statements in emails are not sufficient. Submissions may be referred to in a report on the outcome of the consultation. If you have concerns about your submission being published or being connected back to you, or if it raised concerns for your safety, anonymous submissions will also be accepted and will be referred to as such in the report.

Please note, there may be circumstances where the Government is required by law to release the information in your submission. For example, in accordance with the requirements of the *Government Information (Public Access) Act 2009*.

### **Next steps**

After the consultation period has closed:

- all comments and submissions will be considered
- there may be targeted consultation on specific issues
- a report on the outcome of the review will be tabled in NSW Parliament in 2023.

# Context – residential tenancy domestic violence reforms

## Objectives of the reforms

The domestic violence provisions in the *Residential Tenancies Act 2010* commenced on 28 February 2019 and aim to provide greater protections for victims of domestic violence in rental properties. Key to the reforms was a new process enabling tenants experiencing domestic violence to end their lease immediately without penalty.

Prior to the reforms, the Act allowed a tenant to end their tenancy with 14 days' notice, if a current or former co-tenant or occupant was prohibited by a final apprehended violence order from accessing the premises.

The reforms were based on recommendations from the 2016 statutory review of the Act<sup>5</sup> and further consultation with key stakeholders. They were passed by Parliament in the *Residential Tenancies Amendment (Review) Act 2018*, which received assent on 26 October 2018.

The new provisions allow tenants to rely on any of four types of evidence to terminate their tenancy because of domestic violence. This range of evidence addressed feedback that victims could experience delays and other difficulties in obtaining a final apprehended violence order.<sup>6</sup>

A declaration by a competent person was included in the permitted forms of evidence in view of stakeholder feedback that many domestic violence victims do not contact police or do not wish to engage with the justice system.<sup>7</sup>

The reforms protect victims from financial liability for early termination of the lease and damage caused to the rental property by a domestic violence offence. They also prohibit the listing of tenants who gave a domestic violence termination notice in a tenancy database. It was noted at the time<sup>8</sup> that these measures aim to reduce potential adverse impacts on a tenant's ability to secure new rental housing after escaping domestic violence.

Another new provision made it clear that it is not unreasonable for a tenant to withhold consent to a landlord publishing photographs or videos showing the tenant's possessions if the tenant is in circumstances of domestic violence.

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<sup>5</sup> Report of the Residential Tenancies Act 2010 – Statutory Review (17 June 2016) – found at <https://www.parliament.nsw.gov.au/la/papers/Pages/taled-paper-details.aspx?pk=68407&msclkid=6cbd2df3cffe11eca40d5823017e3025>

<sup>6</sup> Second Reading Speech, Residential Tenancies Amendment (Review) Bill 2018.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

## Key changes since the start of the reforms

### Start of the new regulation on 23 March 2020

A prescribed form for the declaration by a competent person was included in the *Residential Tenancies Regulation 2010* from 28 February 2019 to support the reforms. Some minor changes were made to the form when the current *Residential Tenancies Regulation 2019* (the **Regulation**) started on 23 March 2020.

### Changes made to the Act in November 2019

In November 2019, Parliament passed the *Better Regulation Legislation Amendment Act 2019* which made several changes to the domestic violence provisions in the Act. The key changes included:

- insertion of the following current sections in the Act:
  - section 54A (limit on liability of tenant for actions of other tenants occurring during domestic violence offences)
  - section 105C(2A) (competent persons are authorised to collect, hold, use and disclose personal information about a relevant domestic violence offender for the purposes of making a competent person declaration), and
  - section 105H(2) (offence for a person to knowingly give a competent person false or misleading information for the purposes of the competent person making a declaration)
- a new definition of ‘competent person’ in section 105A, which expanded the types of competent persons who are able to provide a declaration under section 105C(2)(d) of the Act. Prior to this change, ‘competent person’ was limited to medical practitioners. The expanded definition lists six groups, including registered health practitioners (covering medical practitioners, dentists, psychologists, optometrists and others), registered social workers, and certain child welfare, domestic violence and refuge accommodation workers.

The expanded definition of ‘competent person’ started on 11 December 2020. A new declaration of competent person form was prescribed in the Regulation from this date to accommodate the expanded list of competent persons. The other changes to the Act outlined above started on 26 November 2019.

## Where can information on the provisions be found?

Information about the provisions and their operation is available on the [Fair Trading website](#). Real estate agents, landlords, tenants, competent persons and those working to support victims of domestic violence can access this information for assistance in understanding the operation of the provisions and their rights and obligations under them.

Fair Trading data indicates that information on the website about domestic violence in rental properties is regularly accessed and has been since the provisions started in February 2019. For example, the [Domestic violence in a rented property](#) page was visited more than 14,000 times in the 12 month period starting 28 February 2019, more than 20,000 times in the following 12 months, and more than 11,000 times in the next 12 months. This equates to an average of about 1,300 visits to that page per month.

A separate page on the website providing information for and about persons who can make a competent person declaration has also been accessed frequently since it was established in December 2020. The [Professionals who can make a declaration](#) page had been visited over 7,000 times up to the end of February 2022. This equates to an average of more than 500 visits to that page per month. The data indicates there were more than 700 visits to that page during the month of March 2022.

The declaration by competent person forms are available for download on a number of pages on the Fair Trading website. The forms have been frequently downloaded from all those pages, although the highest number of downloads occurred on the [Ending a tenancy](#) page.

Fair Trading receives enquiries or complaints from the public (including agents, landlords and tenants) about residential tenancy matters. Fair Trading data indicates that it received more than 1,300 domestic violence-related residential tenancy enquiries from January 2019 to the end of 2021.

If you, or someone you know, is experiencing domestic violence in a rented home, affected tenants should contact the police or a domestic violence advice or support service. Further information, and links to advice and support services, can be found on the Fair Trading website [Domestic violence in a rented property](#).

## Scope of review

This review is focused on specific parts of the law that enable tenants experiencing domestic violence to end their lease without penalty. These are:

- Part 5, Division 3A of the Act (sections 105A – 105I)
- Sections 54A, 54(1A), 54(1B), 55A(3), 79, and 213A of the Act
- Sections 71, 72, 95, 174 and 175 of the Act, limited to a review of the application of those sections to the rights and obligations of landlords, tenants and co-tenants in cases where a domestic violence termination notice has been given
- Section 187 and 202, limited to a review of the application of those sections to proceedings brought under Part 5, Division 3A of the Act or proceedings involving a party in circumstances of domestic violence.

The following sections highlight the key steps and provisions, identifying possible issues and questions based on preliminary stakeholder consultation and research.

The appendices set out the provisions being reviewed in full (**Appendix 2**) and a consolidated list of the questions in this Issues Paper (**Appendix 1**).

## Ending a tenancy because of domestic violence

If a tenant, or their dependent child, is in circumstances of domestic violence, they can end their tenancy immediately by following the process provided in the Act.

## Providing evidence

*(Relevant sections: 105A, 105B, 105C, 105H)*

A tenant, or their dependent child, is in 'circumstances of domestic violence' if they:

- were the victim of a domestic violence offence during the tenancy
- are protected by an in-force provisional, interim or final Domestic Violence Order (DVO)
- are protected against family violence by an in-force family law injunction, or
- have been declared by a 'competent person' (a professional who can make a declaration) to be a victim of domestic violence perpetrated by the relevant domestic violence offender during the current tenancy.

To end their tenancy for this reason, a tenant must attach one of the following forms of evidence to the termination notice they give to their landlord (or the landlord's agent):

- certificate of conviction for the domestic violence offence
- provisional, interim or final DVO
- family law injunction, or
- declaration made by a competent person in the prescribed form.

An ongoing end of tenancy survey was established by Fair Trading in August 2021 to collect data about how and why tenancies in NSW are terminated. The survey shows:

- for the period August to December 2021 survey responses were received for 25% of online bond claims made during that period (22,736 responses)
- of these, 56 survey responses indicated that the domestic violence provisions were used to terminate the tenancy
- the evidence used to support ending the tenancy was evenly split between a domestic violence order and a declaration from a competent person (28 occasions each).

It is important to note that participation in the end of tenancy survey is voluntary. Responses relevant to the domestic violence provisions may be limited as domestic violence victims could self-select out of completing such a survey, given their vulnerability and the difficult circumstances they may experience after ending a tenancy.

As noted below, the tenant must also give a termination notice to each co-tenant, if any, but they do not need to provide the evidence relied on to any co-tenant.

1. Do the current 'circumstances of domestic violence' listed in the Act adequately capture situations of domestic violence that would require someone to end a tenancy? If not, why and what other circumstances may be appropriate to list?
2. Are the types of evidence required adequate? If not, why? Are there other types of evidence that should be included?

### *Competent persons*

The following classes of persons are defined in the Act as 'competent persons', that is, professionals who can provide a domestic violence declaration to tenants under the Act:

- a registered health practitioner within the meaning of the [Health Practitioner Regulation National Law \(NSW\)](#), but only if the health practitioner is registered under Division 1 or 2 of Part 7 of that Law
- social workers who are a member of the Australian Association of Social Workers
- an employee of a government agency that provides services relating to child welfare

- employees of non-government agencies that receive government funding to provide services relating to:
  - domestic violence or sexual assault, or
  - refuge or emergency accommodation, and
- approved counsellors under the *Victims Rights and Support Act 2013*.

Some stakeholders have suggested other classes of persons could be added to this list to provide greater access for victims of domestic violence, especially those who may have limited engagement with mainstream services or more contact with specialist support services (for example, Aboriginal and Torres Strait Islander people, people with disabilities and people in rural areas).

Stakeholder suggestions for possible additional classes of competent persons include the following types of workers from services receiving government funding:

- disability advocate / support workers
- community access workers
- homelessness or housing workers
- tenancy workers or tenant advocates/solicitors
- workers from Aboriginal corporations registered by the Office of the Registrar of Indigenous Organisations.

3. Is the current definition of competent person appropriate? If not, how could it be improved?
4. What issues (if any) are there with the provision of declarations by competent persons?
5. Are you aware of any issues with other definitions in section 105A of the Act? If so, what are they?

### *Form of declaration*

A declaration by a competent person must be made in the prescribed form, which is currently set out in Schedule 3 of the *Residential Tenancies Regulation 2019*.

### *Privacy*

Competent persons are authorised by the Act to collect, hold, use or disclose personal information about the relevant domestic violence offender that they require for the purposes of making a declaration.

### *False or misleading declarations*

It is an offence for a person to knowingly provide false or misleading information in the course of making a competent person declaration, or if a person gives information to a competent person that the person knows is false or misleading. The current maximum penalty for breach of these offences is \$11,000, or 2 years' imprisonment, or both.

Some stakeholders have suggested that competent persons under the Act would benefit from further guidance as to how to appropriately complete a declaration form and that there are insufficient repercussions for inappropriate use of the form.

6. Are the current provisions and penalties regarding false or misleading information appropriate? If no, what changes should be made?
7. Could the provisions and guidance about providing evidence be improved, and if yes, how?

## Giving a domestic violence termination notice

*(Relevant sections: 105B, 105C, 105D, 105F, 105G, 213A)*

To end a tenancy in circumstances of domestic violence, a tenant will need to give the landlord/agent a termination notice attaching one of the permitted forms of evidence. The termination notice must include a termination date, which can be on the same day that the notice is given or a date after the notice is given.

The tenant must also give a termination notice to each co-tenant, but they do not need to provide any evidence with this notice.<sup>9</sup>

Some stakeholders have suggested that it may not be safe for a tenant to give a termination notice to a co-tenant who is the relevant domestic violence offender. Section 223 of the Act sets out how a document may be given to a person under the Act.

8. Are you aware of any issues or barriers relating to the use of domestic violence termination notices? If so, what are they?
9. What is your experience (if any) as a landlord, agent, tenant or co-tenant with domestic violence terminations?
10. Are you aware of tenants experiencing any difficulty with giving a domestic violence termination notice to a landlord/agent or a co-tenant? If yes, how might this be addressed?
11. Are you able to provide additional context through case studies or examples?

### *Restriction on liability due to early termination*

A tenant does not need to pay any compensation for terminating their fixed-term tenancy early using a domestic violence termination notice. For example, landlords should not be requiring tenants to pay any additional money such as a break-lease fee or other compensation.

### *Confidentiality*

A person, including a landlord/agent, must not use or disclose any document, or information contained in any document, provided with a domestic violence termination notice except in

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<sup>9</sup> The declaration by a competent person or other document relied upon by the tenant to exercise the right to terminate (as listed in section 105C(2)) only needs to be annexed to the termination notice given to the landlord (or the landlord's agent) – those documents are not required to be annexed to the termination notice given to any co-tenant.

accordance with Part 5, Division 3A of the Act, unless the person is permitted or compelled by law to disclose the document or information.

In addition, if a tenant or co-tenant has terminated their tenancy by giving a domestic violence termination notice, landlords and agents are not allowed to list any personal information about them in a residential tenancy database.

Breach of each of these requirements in the Act is an offence having a maximum penalty of 20 penalty units (currently \$2,200).

We have heard from stakeholders that there may be a need to increase awareness of the prohibition against listing information about tenants who have given a domestic violence termination notice in a database.

12. Are the provisions prohibiting information about tenants who have given a domestic violence termination notice in a tenancy database adequate? If not, how could they be improved?
13. Are any other restrictions or changes required to protect the confidentiality of tenants or co-tenants terminating their tenancy using a domestic violence termination notice?

#### *Contents of declaration not reviewable in Tribunal*

The NSW Civil and Administrative Tribunal (the Tribunal) is an independent body that hears and decides on applications for orders from tenants and landlords. The contents of a declaration made by a competent person are not reviewable in any proceedings before the Tribunal.

14. Is the prohibition against contents of competent person declarations being reviewable in Tribunal proceedings clear and working well? If not, how?
15. Have you ever experienced a dispute related to a competent person declaration or a domestic violence termination? If so, what happened?

## **Impacts on co-tenants and occupants**

*(Relevant sections: 79, 95, 54(1A), 54(1B), 54A, 102, 105D, 105E)*

#### *If a co-tenant gives a domestic violence termination notice*

If a co-tenant gives a domestic violence termination notice and leaves the property, they cease to be a tenant under the residential tenancy agreement.

A co-tenant of that tenant (who is not the domestic violence offender) is not liable to pay more than the rent that was previously payable immediately before the notice was given. This applies for two weeks from the notice date. However, the Tribunal may order the payment of a different rent amount.

The Tribunal may also make an order terminating a residential tenancy agreement, on application by a co-tenant, if the Tribunal is satisfied that a domestic violence termination notice was given by another tenant under the same residential tenancy agreement.

16. If you are a co-tenant who has applied for an order terminating a tenancy agreement after another co-tenant gave a domestic violence termination notice, what was your experience?

*If a final apprehended violence order prohibits a tenant's access to premises*

If a final apprehended violence order (AVO) prohibits a tenant or co-tenant from having access to the residential premises, their tenancy is automatically terminated. If this occurs, the Tribunal can make an order recognising any remaining occupants as a tenant under the residential tenancy agreement.

However, some stakeholders have suggested that victims may be reluctant to go through the Tribunal process due to the difficulties some experience in obtaining an AVO and having the co-tenant/perpetrator as a party to the proceedings. It has been suggested a simpler process that does not require application to the Tribunal could assist in helping victims to remain in their home.

17. Are the current processes enabling an occupant to become a tenant after a tenant is prohibited from accessing the premises by an apprehended violence order working well? If no, how can they be improved?

18. Have there been any other impacts on remaining co-tenants? What were they?

## **Limits on liability for damage to rental property**

*(Relevant sections: 54(1A))*

*Property damage occurring during a domestic violence offence*

A tenant is usually responsible for any actions by others that breach a residential tenancy agreement. However, a tenant is not responsible for any action resulting in damage to premises if it occurs during a domestic violence offence and the tenant is:

- the victim of the domestic violence offence, or
- a co-tenant under the same residential tenancy agreement as that tenant/victim (and they are not a relevant domestic violence offender referred to in a document attached to a domestic violence termination notice for that tenancy agreement).

We have heard from stakeholders there may be a lack of awareness about these limits on liability and some victims of domestic violence could potentially experience claims for property damage which would fall within these exemptions.

Other stakeholders have also raised concerns that there are insufficient protections afforded to landlords for property damage, and that they may be left with substantial damage bills through no fault of their own or of the victim of the domestic violence offence.

*Evidence regarding damage*

Some stakeholders believe clearer guidance, or specialist Tribunal members, may be needed for the determination of property damage claims where these exemptions are relied

on.

19. Are the exemptions from liability for property damage occurring during a domestic violence offence clear and operating effectively? If not, how could they be improved?
20. Are you aware of tenants that have experienced claims for property damage contrary to the exemptions, or any difficulty relying on the exemptions? If they did, what were the claims or difficulties?
21. What is your experience (if any) as a landlord, agent, tenant or co-tenant in relation to liability for property damage arising from domestic violence?

## Repayment of rental bond

*(Sections referenced: 174)*

If the tenancy of a co-tenant is terminated and the residential tenancy agreement continues for one or more other co-tenants:

- the remaining co-tenant(s) must pay the former co-tenant their share of the rental bond within 14 days of a request from the former co-tenant, and
- the remaining co-tenant(s) may deduct any amount owed to them by the former co-tenant for rent or other reasonable costs associated with the residential premises.

If a final apprehended violence order is in force prohibiting a former co-tenant from accessing the property, the remaining tenant(s) are not required to repay the bond within the 14 days.

These provisions do not apply if the liabilities of the former co-tenant exceed the amount of rental bond paid by the former co-tenant.

We have heard from stakeholders that domestic violence victims may experience difficulties in recovering their share of the bond without involving the perpetrator or having to go to the Tribunal. They may also experience liabilities being disproportionately taken from their share of the bond.

22. What issues are you aware of that tenants have experienced regarding the repayment of the rental bond when a tenant has given a domestic violence termination notice and a co-tenant has continued renting a property?
23. Are the provisions on repayment of the rental bond working effectively? If not, what are the current barriers and how could they be improved?

## Security of domestic violence victims in a rental property

*(Sections referenced: 55A(3), 71, 72)*

*Consent for publication of photos or videos*

Under the Act, landlords and agents are required to obtain a tenant's written consent before publishing photographs or videos made of the interior of residential premises if any of the

tenant's possessions are visible. Breach of this requirement is an offence, and a penalty applies.

Tenants must not unreasonably withhold consent; however, the Act expressly provides that it is not unreasonable for a tenant to withhold consent if the tenant is in circumstances of domestic violence.

We have heard from stakeholders that sometimes tenants are only asked for this consent at the beginning of a tenancy. A tenant may not be in circumstances of domestic violence at that time but may be in those circumstances later during the tenancy. Stakeholders have suggested that a tenant's prior consent should be obtained each time a landlord or their agent wishes to publish such photographs or videos.

24. What could be the consequences, both positive and negative, if landlords and agents are required to obtain consent each time they wish to publish photos or video recordings of the interior of residential premises in which the tenant's possessions are visible?
25. Should the Act provide that it is not unreasonable for a tenant to withhold consent to such photos or video recordings in any other specific circumstances? If your answer is yes, what are the circumstances? If your answer is no, why not?

#### *Altering, removing or adding a lock or other security device*

A landlord or tenant may only alter, remove or add a lock or other security device for the residential premises if the other party agrees, or with a reasonable cause such as:

- in an emergency
- in accordance with an order of the Tribunal
- after the tenancy of a co-tenant was terminated, or
- after a tenant or occupant of residential premises was prohibited from having access to the premises by an apprehended violence order.

A copy of the key, or other opening device or information required to open a lock or other security device must be given to the other party within 7 days unless the other party agrees, or the Tribunal authorises that a copy is not to be given.

It is prohibited to provide a copy of a key or other opening device or information to a person who is prohibited from having access to the residential premises by an apprehended violence order.

26. Should any other circumstances be listed as a reasonable cause for altering, removing or adding a lock or other security device for the residential premises? If yes, what are they?
27. As a tenant, landlord or agent, what issues (if any) have you had with the operation of these provisions, particularly where a tenant is in circumstances of domestic violence or has given a domestic violence termination notice?

## Role of the Tribunal

(Sections referenced: 105E, 175, 187)

*Note: The review of section 187 is limited to the application of this section to proceedings brought under Part 5, Division 3A Termination by tenant — circumstances of domestic violence, or proceedings in which someone is in circumstances of domestic violence.*

The Tribunal can make orders about:

- rental bonds
- breaches of residential tenancy agreements
- payment of money
- compensation
- repayment of rent
- compliance with the Act
- terminations
- possession of premises and access to residential premises.

Early feedback has suggested some process improvements may help to prevent victims of domestic violence needing to go to the Tribunal for resolution of issues or to make the process more accessible for victims. For example, recovering their share of a bond without involving the perpetrator or having to apply to the Tribunal, or the ability to become a tenant on a lease after the perpetrator has left without having to apply to the Tribunal.

28. If you or someone you know were involved in a domestic violence matter that went to the Tribunal, what was your/their experience? How could it have been improved?
29. Could a matter have been prevented from going to the Tribunal? If so, how? Could the provisions be improved to address this?

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## Appendix 2 – Relevant provisions in the *Residential Tenancies Act 2010*

Section number and scope of review	Section (in full)
54(1A) and 54(1B)	<p>54 Liability of tenant for actions of others</p> <p>(1) A tenant is vicariously responsible to the landlord for any act or omission by any other person who is lawfully on the residential premises (other than a person who has a right of entry without the tenant’s consent) that would have been a breach of the residential tenancy agreement if it had been an act or omission by the tenant.</p> <p>(1A) Subsection (1) does not apply to a tenant who is the victim of a domestic violence offence, or an exempted co-tenant, if the relevant act or omission constitutes or resulted in damage to the residential premises and occurred during the commission of the domestic violence offence.</p> <p>(1B) In this section, an exempted co-tenant means a tenant under the same residential tenancy agreement as the tenant referred to subsection (1A) who is not a relevant domestic violence offender (within the meaning of Division 3A of Part 5) nominated in a document referred to in section 105C(2) and annexed to a domestic violence termination notice (within the meaning of section 105A) for the residential tenancy agreement.</p> <p>(2) This section is a term of every residential tenancy agreement.</p>
54A	<p>54A Limit on liability of tenant for actions of other tenants occurring during domestic violence offences</p> <p>(1) A tenant (the exempted tenant) is not responsible to the landlord for any act or omission by a co-tenant that is a breach of the residential tenancy agreement if—</p> <ul style="list-style-type: none"> <li>(a) the act or omission— <ul style="list-style-type: none"> <li>(i) constitutes or resulted in damage to the residential premises, and</li> <li>(ii) occurred during the commission of a domestic violence offence, and</li> </ul> </li> <li>(b) the exempted tenant is— <ul style="list-style-type: none"> <li>(i) the victim of the domestic violence offence, or</li> <li>(ii) an exempted co-tenant.</li> </ul> </li> </ul> <p>(2) In this section—</p> <p>exempted co-tenant means a person who—</p> <ul style="list-style-type: none"> <li>(a) is a tenant under the same residential tenancy agreement as the tenant who is the victim of the domestic violence offence, and</li> <li>(b) is not a relevant domestic violence offender (within the meaning of Division 3A of Part 5) nominated in a document referred to in section 105C(2) and annexed to a domestic violence termination notice (within the meaning of section 105A) for the residential tenancy agreement.</li> </ul> <p>(3) This section is a term of every residential tenancy agreement.</p>

<p>55A(3)</p>	<p>55A Publishing photographs of residential premises with tenant's consent</p> <p>(1) 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.</p> <p>Maximum penalty—20 penalty units.</p> <p>(2) A tenant must not unreasonably withhold consent required to be obtained under this section.</p> <p>(3) Without limiting subsection (2), it is not unreasonable for the tenant to withhold consent if the tenant is in circumstances of domestic violence, within the meaning of section 105B.</p> <p>(4) In this section, a photograph or visual recording is published if it is—</p> <ul style="list-style-type: none"> <li>(a) publicly exhibited in, on, over or under any building, vehicle or place (whether or not a public place and whether on land or water), or in the air in view of persons being in any street or public place, or</li> <li>(b) disseminated by means of a website, email or other electronic communication, or</li> <li>(c) in the case of a photograph— <ul style="list-style-type: none"> <li>(i) inserted in any newspaper, periodical publication or other publication, or</li> <li>(ii) contained in any flyer or other document sent or delivered to any person or thrown or left on premises occupied by any person.</li> </ul> </li> </ul> <p>(5) A photograph or visual recording is not published if it is disseminated solely between the landlord and the landlord's agent for purposes relating to carrying out an inspection of the residential premises, maintenance or repairs.</p> <p>(6) This section is a term of every residential tenancy agreement.</p>
<p>71 (limited to review of application of section to the rights and obligations of landlords, tenants, and co-tenants in cases where a domestic violence termination notice has been given)</p>	<p>71 Changes of locks and other security devices</p> <p>(1) A landlord or tenant may alter, remove or add or cause or permit the alteration, removal or addition of a lock or other security device for the residential premises only if—</p> <ul style="list-style-type: none"> <li>(a) the other party agrees, or</li> <li>(b) with a reasonable excuse.</li> </ul> <p>(2) Without limiting what is a reasonable excuse, it is a reasonable excuse that a lock or other security device was altered, removed or added—</p> <ul style="list-style-type: none"> <li>(a) in an emergency, or</li> <li>(b) in accordance with an order of the Tribunal, or</li> <li>(c) after the tenancy of a co-tenant was terminated, or</li> <li>(d) after a tenant or occupant of residential premises was prohibited from having access to the residential premises by an apprehended violence order.</li> </ul> <p>(3) If a lock or other security device is altered, removed or added by a landlord or the tenant without the consent of the other party, it is presumed, in the absence of evidence to the contrary, that it was altered, removed or added by the landlord or tenant without reasonable excuse.</p> <p>(4) A landlord or tenant who contravenes subsection (1) is guilty of an offence.</p> <p>Maximum penalty—20 penalty units.</p> <p>(5) This section is a term of every residential tenancy agreement.</p>

<p>Section 72 (limited to review of application of section to the rights and obligations of landlords, tenants, and co-tenants in cases where a domestic violence termination notice has been given)</p>	<p>72 Copies of changed locks and other security devices to be given to other party</p> <p>(1) A copy of the key or any other opening device or information required to open a lock or other security device that is altered, added or removed by a landlord or tenant must be given to the other party not later than 7 days after it is altered, added or removed, unless—</p> <p>(a) the other party agrees, or</p> <p>(b) the Tribunal authorises a copy not to be given.</p> <p>(2) This section does not require a copy of a key or other opening device or information to be given to a person who is prohibited from having access to the residential premises by an apprehended violence order.</p> <p>(3) This section is a term of every residential tenancy agreement.</p>
<p>79</p>	<p>79 Change of tenants after AVO</p> <p>(1) Termination of tenancy On the making of a final apprehended violence order that prohibits a co-tenant or a tenant from having access to the residential premises, the tenancy of that co-tenant or tenant under the residential tenancy agreement is terminated. Such a termination does not affect the tenancy of any co-tenant not subject to the order.</p> <p>(2) Tribunal may recognise occupant as tenant after AVO The Tribunal may, on application by a remaining occupant or co-tenant, make an order recognising the remaining occupant as a tenant under the residential tenancy agreement, if the tenant, or a co-tenant or a former tenant or co-tenant is prohibited by a final apprehended violence order from having access to the residential premises.</p> <p>(3) Orders An order under this section may vest a tenancy over the residential premises in an occupant on such of the terms of the previous residential tenancy agreement as the Tribunal thinks appropriate having regard to the circumstances of the case.</p> <p>(4) An application for an order under this section may be made at the same time as any other application or during proceedings before the Tribunal or independently of any such other application or proceedings.</p> <p>(5) A Tribunal may not make an order under this section in respect of a social housing tenancy agreement unless the remaining occupant meets any applicable eligibility requirements of the social housing provider for tenancy of the premises.</p>
<p>95 (limited to review of application of section to the rights and obligations of landlords, tenants, and co-tenants in cases</p>	<p>95 Occupants remaining in residential premises</p> <p>(1) This section applies if the tenant under a residential tenancy agreement who occupied or partly occupied the residential premises with another occupant no longer resides in the residential premises and the residential tenancy agreement has been terminated.</p> <p>(2) The landlord may give any remaining occupant of the residential premises a notice requiring the occupant to give vacant possession of the premises within a period of not less than 14 days.</p> <p>(3) The Tribunal may, on application by a landlord, make an order for possession of the residential premises specifying the day on which the order for possession takes effect if it is satisfied that—</p>

<p>where a domestic violence termination notice has been given)</p>	<p>(a) notice was given in accordance with this section, and</p> <p>(b) the occupant has not vacated the premises, and</p> <p>(c) the tenant no longer resides in the premises.</p> <p>(4) The Tribunal is not to make an order for possession of the residential premises if the tenant is prohibited by an apprehended violence order from having access to the residential premises while the occupant resides in the premises and the occupant has not had a reasonable opportunity to obtain a final apprehended violence order and to apply to the Tribunal for an order under section 79.</p>
<p>105A</p>	<p>105A Definitions</p> <p>In this Division—</p> <p><b>competent person</b> means any of the following persons—</p> <p>(a) a registered health practitioner within the meaning of the Health Practitioner Regulation National Law (NSW), but only if the health practitioner is registered under Division 1 or 2 of Part 7 of that Law,</p> <p>(b) a person registered as a social worker with the Australian Association of Social Workers,</p> <p>(c) an employee of a government agency that provides services relating to child welfare,</p> <p>(d) an employee of a non-government agency in receipt of government funding to provide services relating to—</p> <p>(i) domestic violence or sexual assault, or</p> <p>(ii) refuge or emergency accommodation,</p> <p>(e) a person approved by the Commissioner of Victims Rights under the Victims Rights and Support Act 2013 to provide approved counselling services for the purposes of that Act,</p> <p>(f) a person prescribed by the regulations.</p> <p><b>dependent child</b>, of a tenant, means an occupant (whether in permanent occupation or occupation from time to time) who is a child and is wholly or partly dependent for support on the tenant.</p> <p><b>domestic violence termination notice</b> means a termination notice given by a tenant under section 105B(1).</p> <p><b>DVO</b> means an order that is in force that is—</p> <p>(a) a local DVO, within the meaning of Part 13B of the Crimes (Domestic and Personal Violence) Act 2007, or</p> <p>(b) an interstate DVO, within the meaning of Part 13B of the Crimes (Domestic and Personal Violence) Act 2007, or</p> <p>(c) a foreign order, within the meaning of Part 13B of the Crimes (Domestic and Personal Violence) Act 2007.</p> <p><b>family violence</b> has the same meaning as it has in the Family Law Act 1975 of the Commonwealth.</p> <p><b>relevant domestic violence offender</b> means—</p> <p>(a) a co-tenant or occupant or former co-tenant or former occupant, or</p> <p>(b) a person with whom a tenant or co-tenant giving a domestic violence termination notice has or has had a domestic relationship, within the meaning of the <i>Crimes (Domestic and Personal Violence) Act 2007</i>.</p>

	<p>Note—</p> <p>The definition of relevant domestic violence offender is only for the purposes of establishing when a person is in circumstances of domestic violence (see section 105B) and when, and by whom, a domestic violence termination notice can be issued (see section 105C) and is intended to be read in the context of this Division as a whole.</p>
105B	<p>105B Right of early termination</p> <p>(1) A tenant may give a termination notice to the landlord and each co-tenant, if any, for a residential tenancy agreement if the tenant or a dependent child of the tenant is in circumstances of domestic violence.</p> <p>(2) A person is in circumstances of domestic violence if the person—</p> <ul style="list-style-type: none"> <li>(a) has been the victim of a domestic violence offence while a tenant of, or a dependent child of a tenant of, the residential premises and a relevant domestic violence offender has been found guilty of that offence, or</li> <li>(b) is the person for whose protection a DVO has been made against a relevant domestic violence offender and the DVO is in force, or</li> <li>(c) is the person for whose protection an injunction under section 68B or 114 of the Family Law Act 1975 of the Commonwealth has been granted on the basis of evidence of family violence in proceedings against a relevant domestic violence offender and the injunction is in force, or</li> <li>(d) has been declared by a competent person to be a victim of domestic violence perpetrated by the relevant domestic violence offender during the currency of the residential tenancy agreement.</li> </ul> <p>(3) A declaration made by a competent person under subsection (2)(d) must be in the form prescribed by the regulations.</p>
105C	<p>105C Domestic violence termination notice</p> <p>(1) A domestic violence termination notice must specify a termination date that is on or after the day on which the notice is given and, in the case of a fixed term agreement, may specify a day before the end of the fixed term.</p> <p>(2) A domestic violence termination notice given to the landlord must have annexed to it one of the following documents relating to the relevant domestic violence offender—</p> <ul style="list-style-type: none"> <li>(a) a copy of the certificate of conviction in proceedings against the relevant domestic violence offender for the domestic violence offence,</li> <li>(b) a copy of the relevant DVO made against the relevant domestic violence offender,</li> <li>(c) a copy of the relevant injunction granted under section 68B or 114 of the Family Law Act 1975 of the Commonwealth in favour of the tenant or co-tenant in proceedings against the relevant domestic violence offender,</li> <li>(d) a declaration made by a competent person that— <ul style="list-style-type: none"> <li>(i) is in the form prescribed by the regulations, and</li> <li>(ii) contains the matters prescribed by the regulations.</li> </ul> </li> </ul> <p>(2A) A competent person is authorised to collect, hold, use and disclose personal information about a relevant domestic violence offender that the competent person requires for the purposes of making a declaration under subsection (2)(d).</p> <p>(3) A person must not, at any time, use or disclose any document, or any information contained in any document, referred to in subsection (2) except in accordance with this Division, unless the person is permitted or compelled by law to disclose the document or information.</p> <p>Maximum penalty—20 penalty units.</p>
105D	<p>105D Effect of giving domestic violence termination notice</p> <p>(1) A tenant is not liable to pay any compensation or other additional amount for the early termination of a fixed term agreement under section 105B.</p> <p>(2) A co-tenant ceases to be a tenant under the residential tenancy agreement on</p>

	<p>the termination date specified in a domestic violence termination notice if the co-tenant gives the domestic violence termination notice in accordance with this Division and vacates the residential premises.</p> <p>(3) A co-tenant who is not a relevant domestic violence offender and who continues to occupy the residential premises after a domestic violence termination notice is given is not liable to pay more than the amount of rent calculated in accordance with subsection (4) for a period of 2 weeks commencing on the date on which the domestic violence termination notice was given.</p> <p>(4) The amount of rent payable by each co-tenant under subsection (3) is equal to the rent that was payable under the residential tenancy agreement relating to the premises immediately before the domestic violence termination notice was given divided by the number of tenants under the residential tenancy agreement before the domestic violence termination notice was given.</p> <p>(5) In any proceedings before the Tribunal in respect of the payment of rent under this section, the Tribunal may order the payment of an amount that differs from the amount calculated in accordance with subsection (4).</p>
105E	<p>105E Orders of Tribunal</p> <p>The Tribunal may, on application by a co-tenant, make a termination order for the residential tenancy agreement if it is satisfied that a domestic violence termination notice was given by another co-tenant in accordance with this Division.</p>
105F	<p>105F Contents of declaration by competent person not reviewable</p> <p>In any proceedings before the Tribunal, the contents of any declaration made by a competent person under section 105C(2)(d) are not reviewable.</p>
105G	<p>105G Right to terminate in addition to other rights</p> <p>A right to terminate a residential tenancy agreement or a co-tenancy under this Division is in addition to any right of a tenant to terminate a residential tenancy agreement or any right of a co-tenant to terminate a co-tenancy under this Act and does not affect the rights of any co-tenant or occupant under any other provision of this Act.</p>
105H	<p>105H False or misleading information</p> <p>(1) A person who furnishes any information or does any other thing in purported compliance with a requirement under section 105C(2)(d), knowing at the time of furnishing the information or the doing of any other thing, that it is false or misleading in a material particular, is guilty of an offence.</p> <p>Maximum penalty—100 penalty units or imprisonment for 2 years, or both.</p> <p>(2) A person must not give a competent person information that the person knows, at the time of providing the information, is false or misleading in a material particular for the purposes of the competent person making a declaration under section 105C(2)(d).</p> <p>Maximum penalty—100 penalty units or imprisonment for 2 years, or both.</p>
105I	<p>105I Review of this Division and other provisions</p> <p>(1) The Minister is to ensure that the operation of this Division and sections 54(1A) and (1B) and 213A during the 3 years after the commencement of those provisions is reviewed and that a report on the outcome of the review is made publicly available within 12 months after the end of that 3 year period.</p> <p>(2) At the same time as conducting the review under subsection (1), the Minister is to ensure that sections 54A, 55A(3), 71, 72, 79, 95, 174, 175, 187 and 202 are reviewed and a report on the outcome of that review is to be included in the report referred to in subsection (1).</p> <p>(3) The review of sections 71, 72, 95, 174 and 175 is limited to a review of the application of those sections to the rights and obligations of landlords, tenants, and co-tenants in cases where a domestic violence termination notice has been given.</p> <p>(4) The review of sections 187 and 202 is limited to a review of the application of those sections to proceedings brought under this Division or proceedings in which a party to the proceedings is in circumstances of domestic violence.</p>

	<p>Note. Sections 54(1A) and (1B), 54A, 55A(3), 71, 72, 79, 95, 174, 175, 187, 202 and 213A are provisions that relate to, or have relevance for, the rights and obligations of landlords, tenants and co-tenants in the context of a tenant, co-tenant, occupant or dependent child being a victim of domestic violence.</p>
174 (limited to review of application of section to the rights and obligations of landlords, tenants, and co-tenants in cases where a domestic violence termination notice has been given)	<p>174 Repayment of bond to former co-tenant</p> <p>(1) This section applies if the tenancy of a co-tenant is terminated and the residential tenancy agreement continues in force in relation to one or more other co-tenants.</p> <p>(2) The remaining co-tenant or co-tenants must, within 14 days of a request by a former co-tenant, pay to the former co-tenant an amount equal to the rental bond (if any) paid by the former co-tenant for the residential tenancy agreement.</p> <p>(3) The remaining co-tenant or co-tenants may deduct from that amount any amount owed to them by the former co-tenant for rent or other reasonable costs associated with the residential premises.</p> <p>(4) If a final apprehended violence order is in force prohibiting a former co-tenant from having access to the residential premises, the remaining tenant or tenants are not required to pay the amount referred to in subsection (2) within the period required by that subsection.</p> <p>(5) A former co-tenant who is paid an amount in accordance with this section is not entitled to payment of any other amount of rental bond for the residential tenancy agreement.</p> <p>(6) This section does not apply if the liabilities of the former co-tenant under the residential tenancy agreement exceed the amount of rental bond paid by the former co-tenant.</p>
Section 175 (limited to review of application of section to the rights and obligations of landlords, tenants, and co-tenants in cases where a domestic violence termination notice has been given)	<p>175 Powers of Tribunal</p> <p>(1) The Tribunal may, on application by a landlord or tenant or any other person (including a former co-tenant) who has an interest in the payment of a rental bond, make an order as to the payment of the amount of the rental bond.</p> <p>(2) The Tribunal may make an order whether or not the amount of a rental bond has been paid by the Secretary.</p> <p>(3) An application for an order must be made within the period prescribed by the regulations.</p>
Section 187 (limited to review of application of section to proceedings brought under Division 3A of the Act or	<p>187 Orders that may be made by Tribunal</p> <p>(1) The Tribunal may, on application by a landlord or tenant or other person under this Act, or in any proceedings under this Act, make one or more of the following orders—</p> <p>(a) an order that restrains any action in breach of a residential tenancy agreement,</p> <p>(b) an order that requires an action in performance of a residential tenancy agreement,</p> <p>(c) an order for the payment of an amount of money,</p> <p>(d) an order as to compensation,</p>

<p>proceedings in which a party to the proceedings is in circumstances of domestic violence)</p>	<p>(e) an order that a party to a residential tenancy agreement perform such work or take such other steps as the order specifies to remedy a breach of the agreement,</p> <p>(f) an order that requires payment of part or all of the rent payable under a residential tenancy agreement to the Tribunal until the whole or part of the agreement has been performed or any application for compensation has been determined,</p> <p>(g) an order that requires rent paid to the Tribunal to be paid towards the cost of remedying a breach of the residential tenancy agreement or towards the amount of any compensation,</p> <p>(h) an order directing a landlord, landlord's agent or tenant to comply with a requirement of this Act or the regulations,</p> <p>(i) a termination order or an order for the possession of premises,</p> <p>(j) an order directing a landlord or landlord's agent to give a former tenant or person authorised by a former tenant access to residential premises for the purpose of recovering goods of the former tenant or fixtures that the former tenant is entitled to remove.</p> <p>(2) Without limiting the Tribunal's power to make an order as to compensation, the Tribunal may order compensation to be paid for the following—</p> <p>(a) loss of rent,</p> <p>(b) any other breach of a residential tenancy agreement,</p> <p>(c) loss or damage suffered by a person as a result of inaccurate, ambiguous or out-of-date information being listed about the person on a residential tenancy database.</p> <p>(3) An order under subsection (1)(a) or (b) may be made even though it provides a remedy in the nature of an injunction or order for specific performance in circumstances in which such a remedy would not otherwise be available.</p> <p>(4) The Tribunal must not make an order for—</p> <p>(a) the payment of an amount that exceeds the amount (if any) prescribed by the regulations for the purposes of this section, or</p> <p>(b) the performance of work or the taking of steps the cost of which is likely to or will exceed the amount (if any) prescribed by the regulations for the purposes of this section.</p> <p>Note—</p> <p>This Act also confers other order-making powers on the Tribunal, including other specific powers to make termination orders, to declare that premises have been abandoned, to make orders about holding fees and to make various orders about rental bonds.</p>
<p>Section 202 (limited to review of application of section to proceedings brought under Division 3A of the Act or proceedings in which a party to the proceedings is in circumstances of</p>	<p>202 Nature of proceedings for offences</p> <p>(1) Proceedings for an offence under this Act or the regulations may be dealt with summarily before the Local Court.</p> <p>(1A) Proceedings for an offence under section 105H may only be instituted by or with the approval of the Director of Public Prosecutions.</p> <p>(2) Proceedings for an offence under section 120(1) may also, with the consent of the Minister, be dealt with by the Supreme Court in its summary jurisdiction.</p> <p>(3) The maximum monetary penalty that may be imposed by the Local Court in proceedings for an offence against this Act is 50 penalty units or such other amount as may be prescribed by the regulations.</p> <p>(4) Proceedings for an offence against this Act may be brought—</p> <p>(a) in the case of an offence in relation to a rental bond for a residential tenancy agreement or a proposed residential tenancy agreement—within the period of 3 years that next succeeds—</p> <p>(i) the commission of the offence, or</p> <p>(ii) the termination of the residential tenancy agreement, whichever is the later, or</p> <p>(b) in any other case—within the period of 3 years that next succeeds the commission of the offence, or</p> <p>(c) with the consent of the Attorney General—at any time.</p>

domestic violence)	
213A	<p>213A Further restriction on listing—domestic violence  A landlord or landlord's agent must not list personal information about a person in a residential tenancy database if—</p> <p>(a) the person was named as a tenant in a residential tenancy agreement that was terminated, or</p> <p>(b) the person's co-tenancy was terminated, under Division 3A of Part 5 and the person was the tenant or co-tenant giving the termination notice under that Division.  Maximum penalty—20 penalty units.</p>