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REAL ESTATE INSTITUTE OF NEW SOUTH WALES SMOKE ALARMS

Smoke alarms

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Smoke alarms are mandatory in those homes and other shared accommodation buildings where people sleep as specified in the *Environmental Planning and Assessment Regulation 2000* (NSW) (EPA Regulation).

Property managers (as agent for the landlord), landlords and tenants have specific responsibilities in regards to smoke alarms:

- Landlords must ensure that smoke alarms are installed and maintained, if section 146A of the Environmental Planning and Assessment Act 1979 (NSW) requires them to be installed.¹
- Neither the landlord nor the tenant are permitted to remove or interfere with the operation of a smoke alarm installed in the rented premises, unless they have a reasonable excuse to do so.¹
- Landlords have the right of access to rented premises to fit or maintain smoke alarms, providing the tenant has been given at least two days' notice.²
- Where the smoke alarm has a replaceable battery, it is recommended that the landlord fit a new battery at the beginning of a tenancy.²
- After the tenancy begins, the tenant is responsible for replacing batteries in smoke alarms. Where a tenant is physically unable to change the battery, it is recommended that they advise the landlord or contact Fire and Rescue NSW.²
- The condition report includes a specific reference to smoke alarms, so that tenants and landlords are able to note and comment on the presence of smoke alarms at the beginning and end of the tenancy.²
- Owners of residential property who rent out their premises as holiday accommodation are responsible for installing smoke alarms and replacing batteries.²

The EPA Regulation requires that smoke alarms:³

- comply with Australian Standard AS 3786; and
- be installed on or near the ceiling in the following areas:
 - in any storey containing bedrooms: in every corridor or hallway associated with a bedroom or, if there is no corridor or hallway, between the part of the home containing the bedroom and rest of the dwelling; and
 - in any storey not containing bedrooms.
 - Additionally, the Building Code of Australia requires smoke alarms to be installed in egress paths in any storey not containing bedrooms and that, where there is more than one alarm installed in a home, they should be interconnected.⁴

As noted above, smoke alarms should be installed in other storeys, even if those storeys consist of only car parking, bathrooms, laundries and the like.

Risk management

Regulations place the responsibility of smoke alarm compliance on the property owner.

Property managers (as the owner's agent) accept contractual responsibility for ensuring that smoke alarms are installed and maintained on the residential premises. Failure of a property manager to satisfy that contractual obligation could have disastrous consequences including loss of life, negligence claims and potential litigation.

In addition, real estate agents are “persons conducting a business or undertaking” for the purposes of the work health and safety laws. As such they have obligations under the legislation to “ensure so far as is reasonably practicable that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking”.⁵ This would include ensuring that smoke alarms are installed and properly maintained.

Therefore, property managers need to have established policies, procedures and systems in place to ensure they meet their responsibilities and obligations.

Best practice

Prior to the commencement of a tenancy, smoke alarms should be checked, cleaned and tested. Alarms should be replaced if they are faulty, missing or past their expiry date (all smoke alarms, including 240v hard-wired alarms, must be replaced no later than 10 years after their manufacture date). It is recommended that a new battery be installed at the commencement of a tenancy if the smoke alarm has a replaceable battery.² The Condition Report should show that this has been done and the date the tests/checks were performed.

Ongoing maintenance and inspection of smoke alarms is important. There are examples of tenants who have sued property managers for failure to maintain smoke alarms.

Property managers who choose to undertake this work themselves run significant risk. Property managers are generally not appropriately qualified or trained to ensure total smoke alarm compliance. There is also a significant WHS risk in climbing ladders/chairs to inspect and service the alarms. REINSW recommends that appropriately qualified professionals are used to ensure smoke alarm compliance, which should assist in satisfying a property manager’s contractual obligations.

When using an appropriately qualified professional, a property manager should ensure that at the commencement of a tenancy (and at least annually thereafter) the professional provides a dated, written report stating that:

- The smoke alarms meet Australian Standard AS 3786
- The smoke alarms are located as per the requirements of the EPA Regulation and the Building Code of Australia
- The smoke alarms are not past their expiry/replacement date
- The smoke alarms have been fitted with new batteries (where the smoke alarms have replaceable batteries)
- The smoke alarm siren has the required decibel output of 85dBa
- The (240v) smoke alarms are actually connected to the power supply

It is common that, following a fire in a rented property, the relevant fire authority will ask the property manager to provide documented evidence of the smoke alarms being checked and that the property was fitted with compliant smoke alarms. The dated report from the professional is a property manager’s protection and proof that their obligations have been met.

Summary

Not meeting all smoke alarm compliance requirements can have serious consequences for tenants, landlords and property managers. REINSW advocates that all agents have documented and established procedures and policies to ensure smoke alarm compliance in properties they manage. By doing so, property managers are meeting their obligations and protecting their tenants and landlords.

References

1. *Schedule 1 to the Residential Tenancies Regulation 2010 (NSW)*
2. *NSW Fair Trading "Safety and Security – Information for Landlords" factsheet (dated February 2015)*
3. *Environmental Planning and Assessment Regulation 2000 (NSW), clauses 186A and 186B*
4. *Building Code of Australia Volume One 2015, Specification E2.2a Smoke Detection and Alarm Systems*
5. *Work Health and Safety Act 2011 (NSW), section 19*