

LFAI Amendment Regulations

Policy & Legislation
NSW Fair Trading

By e-mail: policy@finance.nsw.gov.au

11 April 2016

Dear Sirs

REINSW SUBMISSION IN RESPONSE TO THE PROPOSED LOOSE-FILL ASBESTOS INSULATION AMENDMENT REGULATIONS 2016

The Real Estate Institute of New South Wales Limited (**REINSW**) has been invited to comment on the proposed changes to the *Residential Tenancies Regulation 2010* (NSW) (**Regulation**), a copy of which is **enclosed**. It is the understanding of REINSW that the purpose of the draft amendments to the Regulation (**Draft Amendments**) are to include:

- (a) a listing on the loose-fill asbestos insulation register (**LFAI Register**) as a material fact to be disclosed to prospective tenants; and
- (b) a new clause 40B in the standard residential tenancy agreement set out in Schedule 1 to the Regulation regarding rental properties being listed on the LFAI Register.

Whilst REINSW has comments to make on the drafting of the Draft Amendments, it cannot provide those comments until the policy direction of the Draft Amendments is corrected.

Clause 40B.1 requires a landlord to notify the tenant if, at the time of entering into the residential tenancy agreement, the premises is listed on the LFAI Register. It is REINSW's understanding that the LFAI Register exists as a warning for people to stay away from properties that appear on it. REINSW strongly believes that properties listed on the LFAI Register are patently dangerous and are, therefore, uninhabitable. They should not be leased under any circumstances.

If a premises is listed on the LFAI Register during a tenancy, then clause 40B.2 requires the landlord to notify the tenant within 14 days of the premises being listed that the premises are so listed on that register. REINSW considers clause 40B.2 to be insufficient as it fails to accurately reflect what happens to the lease in the event the premises is listed on the LFAI Register during a tenancy. Pursuant to section 109 of the *Residential Tenancies Act 2010* (NSW), the premises will become wholly uninhabitable and the residential tenancy agreement will become frustrated. In those circumstances, the landlord or tenant may give the other party a termination notice. It is REINSW's opinion that clause 40B.2 falls short of the whole picture.

REINSW is concerned that the Draft Amendments would adversely impact unsophisticated tenants and other people in low socio-economic circumstances who may agree to lease a

premises listed on the LFAI Register if they receive a discounted rent. REINSW believes that the Government should be preventing those situations, not encouraging them.

Finally, REINSW insists that the amendments to the Regulation come into effect on 30 October 2016 as opposed to 30 May 2016. That extended timeframe gives the Government sufficient time to rectify the policy direction and drafting of the Draft Amendments.

REINSW is more than happy to discuss further should the need arise.

Yours faithfully

A handwritten signature in black ink, appearing to be 'Tim McKibbin', written in a cursive style.

Tim McKibbin
Chief Executive Officer
The Real Estate Institute of New South Wales Limited



New South Wales

Residential Tenancies Amendment (Loose-fill Asbestos Insulation) Regulation 2016

under the

Residential Tenancies Act 2010

[The following enacting formula will be included if this Regulation is made:]

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Residential Tenancies Act 2010*.

Minister for Innovation and Better Regulation

Explanatory note

The object of this Regulation is to amend the *Residential Tenancies Regulation 2010* as follows:

- (a) to prescribe, as a material fact that must not be knowingly concealed by a landlord or landlord's agent to induce a tenant to enter into a residential tenancy agreement, the fact that residential premises to which the agreement applies are listed on the register (the **LFAI Register**) under Division 1A of Part 8 of the *Home Building Act 1989* of residential premises that contain or have contained loose-fill asbestos insulation,
- (b) to require landlords, as a term of the standard form of residential tenancy agreement, to advise tenants if premises are listed on the LFAI Register.

This Regulation is made under the *Residential Tenancies Act 2010*, including sections 15 (1) and (2), 26 (1) and 224 (the general regulation-making power).

Residential Tenancies Amendment (Loose-fill Asbestos Insulation) Regulation 2016 [NSW]

Residential Tenancies Amendment (Loose-fill Asbestos Insulation) Regulation 2016

under the

Residential Tenancies Act 2010

1 Name of Regulation

This Regulation is the *Residential Tenancies Amendment (Loose-fill Asbestos Insulation) Regulation 2016*.

2 Commencement

This Regulation commences on 30 May 2016 and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Residential Tenancies Regulation 2010

[1] Clause 3 Definitions

Insert in alphabetical order in clause 3 (1):

LFAI Register means the register of residential premises that contain or have contained loose-fill asbestos insulation that is required to be maintained under Division 1A of Part 8 of the *Home Building Act 1989*.

[2] Clause 7 Disclosure of information to tenants generally: s 26 (1) of Act

Insert after clause 7 (b):

(ba) the residential premises are listed on the LFAI Register,

[3] Schedule 1 Standard Form Agreement

Insert after clause 40A:

LOOSE-FILL ASBESTOS INSULATION

40B. The landlord agrees:

40B.1 if, at the time that this residential tenancy agreement is entered into, the premises have been and remain listed on the LFAI Register, the tenant has been advised in writing by the landlord that the premises are listed on that Register, or

40B.2 if, during the tenancy, the premises become listed on the LFAI Register, to advise the tenant in writing, within 14 days of the premises being listed on the Register, that the premises are listed on the Register.

[4] Schedule 1 Standard Form Agreement

Insert in alphabetical order in clause 1 of the Notes appearing after clause 45:

LFAI Register means the register of residential premises that contain or have contained loose-fill asbestos insulation that is required to be maintained under Division 1A of Part 8 of the *Home Building Act 1989*.