

Terminating a tenancy in circumstances of domestic violence

Purpose of this declaration

Under the *Residential Tenancies Act 2010* (the Act), a tenant can terminate their residential tenancy agreement without being penalised if the tenant is in circumstances of domestic violence.

To terminate the agreement in this way, the tenant seeking to end the tenancy (the tenant) must give their landlord a domestic violence termination notice together with **one** of the four documents listed under the Act for this purpose. One of those documents is a signed declaration from a "competent person" that the tenant is a victim of domestic violence perpetrated by the "relevant domestic violence offender" (see below) during the currency of the residential tenancy agreement. This completed declaration may be used instead of a Domestic Violence Order, a Family Law Injunction or a Certificate of Conviction (these documents are the other 3 documents listed under the Act).

Who can make this declaration

You can only make this declaration if:

- you are a "competent person" under the Act, that is, you are:
 - ♦ a registered health practitioner within the meaning of the *Health Practitioner Regulation National Law (NSW)*, who holds general or specialist registration under that Law, or
 - ♦ a person registered as a social worker (a member of the Australian Association of Social Workers), or
 - ♦ an employee of a NSW government agency that provides services relating to child welfare, or

- ♦ an employee of a non-government agency that receives government funding to provide services relating to:
 - ❖ domestic violence or sexual assault, or
 - ❖ refuge or emergency accommodation, or
- ♦ a person approved by the Commissioner of Victims Rights under the *Victims Rights and Support Act 2013* to provide approved counselling services under that Act, and
- you have consulted with the tenant.

Additional information about the above categories of competent person and who can make this declaration is provided at the end of this form.

Who is a "relevant domestic violence offender"

A "relevant domestic violence offender" must be the tenant's co-tenant or former co-tenant, or an occupant or former occupant of the tenant's residence or a person with whom the tenant has or has had a domestic relationship. For this reason, and to ensure that the rights and obligations of a co-tenant, if any, are not impacted, the tenant has to identify the relevant domestic violence offender and the name of that person has to be recorded in this declaration.

Note: The use of the term "relevant domestic violence offender" is only to establish if the tenant is in circumstances of domestic violence under the Act. It does not mean that the person the tenant identifies as the perpetrator of the domestic violence has been convicted of a domestic violence offence.

How to complete this declaration

1. Before you complete this form, you will need to assess if, in your professional opinion, the tenant is a victim of domestic violence that occurred during the tenant's current tenancy.
2. **You are not required to prove that domestic violence has taken place.**
Your assessment should be based on your professional observations and the information you obtain during your consultation with the tenant.
Note: *You should not, under any circumstances, contact or seek information from the relevant domestic violence offender. Doing so may put the tenant, the tenant's dependent child or others at risk.*
3. Once you have assessed the tenant and their circumstances, you must **complete all parts of this form** by:
 - (a) entering the details of the tenant, and
 - (b) entering the name of the relevant domestic violence offender, based on the information the tenant provides you, and
 - (c) selecting the type of relationship between the tenant and the relevant domestic violence offender, based on the information the tenant provides you, and
 - (d) completing and signing the declaration.

4. Give the completed declaration to the tenant and keep a copy for your records.
5. For further information on who can make this declaration and how to complete this form go to the NSW Fair Trading website.

Note: *The NSW Fair Trading website is www.fairtrading.nsw.gov.au*

WARNING: Knowingly providing false or misleading information in connection with this declaration may be an offence under section 105H of the Act, for which a maximum penalty of 100 penalty units or 2 years imprisonment, or both, applies. This offence can apply to the tenant, the person making this declaration, or both.

It is NOT an offence to make a declaration based on information that you believed to be true at the time of making the declaration. You are NOT required to prove that domestic violence has taken place.

PART 1: Details of tenant seeking to terminate the tenancy / being declared a victim of domestic violence

Family name:

Given names:

Address of the rented residential premises:

Suburb:

State:

Postcode:

Phone number (*include area code if applicable*) or the name and contact details of a nominated person (OPTIONAL):

Note: *A separate form needs to be completed, and declaration made, for **each** tenant seeking to be declared a victim of domestic violence.*

PART 2: Details of relevant domestic violence offender and relationship with tenant

1. Who is the person **the tenant has identified** as the perpetrator of the domestic violence?

Full name:

Note: You are authorised to collect, hold, use or disclose personal information about a "relevant domestic violence offender" that you require to make this declaration.

2. Is the person named above, in question 1 in this Part, a co-tenant/former co-tenant or an occupant/former occupant of the residential premises specified in Part 1? Yes No

If the answer to question 2 is "No", the following question MUST be completed.

3. What is the relationship the tenant has or had with the person named above (the "relevant domestic violence offender")?

[Select the description of the most recent relationship and cross out "are" or "were" as applicable]

The tenant and the relevant domestic violence offender are/were:

- married to each other
- in a de facto relationship with each other
- in an intimate personal relationship with each other, whether or not the relationship is/was sexual
- living in the same household
- living as long-term residents in the same residential facility at the same time as each other, excluding facilities that are correctional centres or detention centres
- in a relationship involving the tenant's dependence on the ongoing paid or unpaid care of the tenant by the relevant domestic violence offender
- relatives
- in the case of Aboriginal persons or Torres Strait Islanders—in an extended family or kinship relationship according to the Indigenous kinship system of the culture of either the tenant or the relevant domestic violence offender
- married to, or in a de facto or intimate personal relationship with, the same person (that is, a common third person) even if it was at different times and they have not met

If-

- **the answer to question 2 in this Part is "No", and**
- **the tenant and the person named above are NOT in any of the relationships listed above** in question 3 in this Part,

then the person the tenant has identified in Part 2 as the perpetrator of the domestic violence is NOT the "relevant domestic violence offender" for the purpose of this declaration. **This means the declaration in Part 3 cannot be completed.**

PART 3: Declaration by competent person

I declare that:

I am *[please select one of the following options - select the most relevant option if more than one applies]*:

- a registered health practitioner within the meaning of the *Health Practitioner Regulation National Law (NSW)*, who holds general or specialist registration under that Law,
- registered as a social worker (a member of the Australian Association of Social Workers,
- an employee of a NSW government agency that provides services relating to child welfare,
- an employee of a non-government agency that receives government funding to provide services relating to domestic violence or sexual assault,
- an employee of a non-government agency that receives government funding to provide services relating to refuge or emergency accommodation,
- approved by the Commissioner of Victims Rights under the *Victims Rights and Support Act 2013* to provide approved counselling services under that Act.

Note: Additional information about the above categories and who can make this declaration is provided at the end of this form.

I personally consulted with the tenant in my professional capacity on (date of consultation):

Date (dd/mm/yyyy)

On the basis of information obtained from the tenant, and observations made in the course of that consultation, I have formed the view that (name of tenant):

is a victim of domestic violence perpetrated by the person named by the tenant in question 1 of Part 2, being the relevant domestic violence offender, on/during the period *[cross out the words that are not applicable]*:

(approximate date on which, or period during which, the domestic violence was perpetrated).

[Complete EITHER Part 3A OR Part 3B OR Part 3C, whichever is applicable to the option selected at the beginning of Part 3]

Part 3A: Details of registered health practitioner

Full name:

Registration number:

Date (dd/mm/yyyy):

Signature:

OR

Part 3B: Details of person registered as a social worker (a member of the Australian Association of Social Workers (AASW))

Full name:

Signature:

AASW membership number:

Date (dd/mm/yyyy):

OR

Part 3C: Details of all other competent persons

Full name

Signature:

Occupation:

Name of organisation (government or non-government agency employees only):

***Note:** Competent persons who are signing the declaration as approved counsellors under the Victims Rights and Support Act 2013 do not have to complete the Name of organisation.*

Date (dd/mm/yyyy):

Please keep a copy of this form and any attachments for your own records.

CONFIDENTIALITY: A person who has this document (or a copy of this document) in their possession must ensure that it is stored securely and, if disposed, disposed of securely. This document, and the information contained in this document, must not be used or disclosed by any person except in accordance with the *Residential Tenancies Act 2010*, Part 5, Division 3A, unless disclosure is permitted or compelled by law.

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Further guidance

The following information is intended as general guidance only for assisting in the completion of this form and should not be relied on as legal advice.

Who can make this declaration as a registered health practitioner?

A registered health practitioner can make this declaration if they hold either general registration under Part 7, Division 1, or specialist registration under Part 7, Division 2, of the *Health Practitioner Regulation National Law (NSW)* in one of the following health professions:

- Aboriginal and Torres Strait Islander health practice
- Chinese medicine
- chiropractic
- dental, including the profession of a dentist, dental therapist, dental hygienist, dental prosthetist and oral health therapist
- medical
- medical radiation practice
- midwifery
- nursing
- occupational therapy
- optometry
- osteopathy
- paramedicine
- pharmacy
- physiotherapy
- podiatry
- psychology

Who is registered as a social worker with the Australian Association of Social Workers?

Social workers who are current members of the Australian Association of Social Workers (AASW) other than student members.

Note: Further information about members of the AASW can be found on the AASW website at <https://www.aasw.asn.au>

Who is an employee of a NSW government agency that provides services relating to child welfare?

An employee of a NSW government agency who works in child protection.

Who is a person approved by the Commissioner of Victims Rights to provide approved counselling services under the Victims Rights and Support Act 2013?

Information about the approved counselling services under the *Victims Rights and Support Act 2013* can be found on the relevant agency's website.

Note: The information can be found on the Department of Communities and Justice website at <https://www.victimsservices.justice.nsw.gov.au>