

Terms and Conditions for the NSW Government Residential Tenancy Support Payment

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1. Application and acceptance of Terms and Conditions

- 1.1 The NSW Department of Customer Service ("DCS") is delivering the Residential Tenancy Support Package ("the Package") to support tenants and landlords impacted financially by the COVID-19 pandemic. As part of the Package, tenants who cannot meet their rent payments will be protected from eviction during a moratorium period commencing on 14 July 2021 and expiring at the end of 11 September 2021 ("the Moratorium Period"). Also as part of the Package, landlords can apply to receive the Residential Tenancy Support Payment ("Payment") which is a lump sum payment of up to \$3,000.00 per tenancy agreement. The Payment will be available to landlords who agree to reduce the rent for tenants impacted financially by COVID-19 from 14 July 2021. Any such rent reduction agreement can run longer than the Moratorium Period (i.e. beyond 11 September 2021) if the tenant and landlord agree.
- 1.2 The amount of the Payment for each tenancy agreement is capped at either \$3,000.00 or the amount of the rent reduction that is passed onto the tenant from 14 July 2021, whichever is lower. Landlords who applied for the Payment prior to 16 August 2021, when the Payment was capped was \$1,500.00, are entitled to receive a second Payment of up to \$1,500.00 per tenancy agreement. A landlord who has received a Payment cannot ask the tenant to repay the amount of the rent reduction. Also, a landlord cannot claim both a Payment and the 2021 land tax COVID-19 relief for landowners. For the purpose of considering an application for a Payment, DCS will need to be satisfied that there is a residential tenancy agreement in place between the landlord and the tenant, as evidenced by a lodged rental bond or written agreement.
- 1.3 Payments will be made as act of grace payments under section 5.7(1) of the *Government Sector Finance Act 2018* ("GSF Act"). The conditions in clause 4.1 of this document are the conditions that will be imposed by the Minister or the Minister's delegate on deciding to make a Payment, pursuant to section 5.7(2) of the GSF Act. If a condition in clause 4.1 is contravened by a Recipient of a Payment, the amount of the Payment may be recovered from the Recipient by the Crown in a court of competent jurisdiction as a debt due to the Crown, pursuant to section 5.7(3) of the GSF Act.
- 1.4 Subject to future amendment, these Terms and Conditions apply to Payments approved on or after 27 August 2021. By applying to receive a Payment, the applicant agrees to be bound by these Terms and Conditions.

2. Definitions and interpretation

- 2.1 In these Terms and Conditions, unless the context otherwise requires:

"DCS" means the NSW Department of Customer Service.

"GSF Act" means the *Government Sector Finance Act 2018* (NSW).

"Impacted tenant" has the same meaning as in Part 6A of the *Residential Tenancies Regulation 2019* (NSW) as it applied on 14 July 2021.

"Landlord" has the same meaning as in section 3(1) of the *Residential Tenancies Act 2010* (NSW).

"Landlord's agent" has the same meaning as in section 3(1) of the *Residential Tenancies Act 2010* (NSW).

"Land Tax Benefit" means the NSW Government's 2021 land tax COVID-19 (1 July 2021 to 31 December 2021) relief announced on 14 July 2021 and administered by Revenue NSW.

"Minister" means the Minister for Customer Service.

"Moratorium Period" means the period from 14 July 2021 to the end of 11 September 2021 during which tenants who cannot meet their rent payments will be protected from eviction.

"Package" means the NSW Government Residential Tenancy Support Package.

"Payment" means the NSW Government Residential Tenancy Support Payment.

"Rent reduction agreement" means an agreement between the parties to a residential tenancy agreement to reduce the rent payable by one or more tenants during any period within (but not necessarily limited to) the Moratorium Period.

"Recipient" means a landlord in respect of whom the Minister or a delegate of the Minister has authorised the making of a Payment under section 5.7 of the GSF Act.

"Residential tenancy agreement" has the same meaning as in section 13 of the *Residential Tenancies Act 2010* (NSW).

"Terms and Conditions" means these Terms and Conditions for the Payment.

2.2 Unless the context requires otherwise, the singular includes the plural and vice versa, reference to a gender includes all genders, reference to "person" includes a natural person, company, body corporate or other form of legal entity, and reference to "including" and "includes" and "for example" is to read as if followed by "without limitation".

2.3 If a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning.

3. Eligibility

3.1 A landlord may be eligible to apply for a Payment if:

- (a) The landlord is a party to a residential tenancy agreement with one or more impacted tenant(s);
- (b) The landlord has reduced or has agreed to reduce the rent payable by the impacted tenant(s) from 14 July 2021 pursuant to a rent reduction agreement;

- (c) The landlord has not claimed the Land Tax Benefit attributable to the parcel of land leased to the impacted tenant; and
 - (d) The landlord has not previously received or applied for a Payment in respect of the same tenant(s) or tenancy agreement. The only exception is that landlords who applied for a Payment prior to 16 August 2021, when the Payment was capped was \$1,500.00, are/were entitled to apply on or after 16 August 2021 for and to receive a second Payment of up to \$1,500.00 per tenancy agreement.
- 3.2 Information provided by a landlord or landlord's agent in an application for a Payment must not be false or misleading. It is a serious offence to provide false or misleading information to a public authority.
- 3.3 Notwithstanding any other provision in these Terms and Conditions, DCS may refuse to grant an application for a Payment for any reason, including if the landlord does not meet the eligibility criteria in clause 3.1.
- 3.4 Notwithstanding any other provision of these Terms and Conditions, DCS may make enquiries and exchange information with other NSW government agencies, or other States, Territories and/or the Commonwealth for the purpose of determining an application for a Payment, or for the purpose of ensuring that persons who are granted a Payment are not also granted the Land Tax Benefit, or for related purposes. DCS may disclose the personal information of the landlord or the landlord's agent for those purposes.
- 3.5 A Recipient may be audited or investigated by DCS to determine whether the Recipient is complying with these Terms and Conditions. A Recipient must provide any information or documentation that is reasonably required for the purpose of any such audit or investigation.

4. Conditions of Payment

- 4.1 Any Payment authorised by the Minister or the Minister's delegate is subject to the following conditions:
- (a) The Recipient must not make any further application for a Payment in respect of the residential tenancy agreement to which the Payment relates. The only exception is that landlords who applied for a Payment prior to 16 August 2021, when the Payment was capped was \$1,500.00, are/were entitled to apply on or after 16 August 2021 for a second Payment of up to \$1,500.00 per tenancy agreement.
 - (b) The Recipient must not receive or take the benefit of more than one Payment per residential tenancy agreement, in a maximum amount of \$3,000.00. The only exception is that landlords who applied for a Payment prior to 16 August 2021, when the Payment was capped was \$1,500.00, are entitled to receive and take the benefit of a second Payment of up to \$1,500.00 per tenancy agreement (for a maximum amount of \$3,000.00 in total).
 - (c) The Recipient must notify DCS within seven (7) days of becoming aware that the Recipient has received or taken the benefit of more Payments than they are entitled to, or an amount in excess of the maximum amount they are entitled

to, in respect of any given residential tenancy agreement, in contravention of clause 4.1(b).

- (d) The Recipient must repay to the Crown any amount the Recipient has, for any reason (including by mistake), received or taken the benefit of in contravention of clause 4.1(b).
 - (e) The Recipient must not apply for, claim, receive or otherwise take the benefit of the Land Tax Exemption in respect of the parcel of land leased under the residential tenancy agreement to which a Payment relates.
 - (f) The Recipient must not request, require, demand or otherwise attempt to recover from a tenant the amount of any difference between the rent paid by the tenant pursuant to the rent reduction agreement to which a Payment relates and the rent the tenant would have otherwise been obligated to pay if not for the rent reduction agreement.
 - (g) The Recipient must take all reasonable steps to ensure that the conditions in clauses 4.1(a)–(f) (as applicable) are or have been satisfied at all relevant times.
- 4.2 The conditions in clause 4.1 are the conditions that will be imposed by the Minister or the Minister's delegate on deciding to make a Payment, pursuant to section 5.7(2) of the GSF Act.
- 4.3 This clause does not limit or otherwise affect the power of the Minister or the Minister's delegate in section 5.7(2) of the GSF Act to impose additional or different terms and conditions in respect of any particular Payment.

5. Recovery of Payment

- 5.1 If a Recipient has received a Payment and DCS is satisfied that any of the conditions in clause 4.1 which apply to the Payment, or any other terms and conditions imposed by the Minister on the Payment, were or have been contravened, the payment may be recovered from the Recipient by the Crown in a court of competent jurisdiction as a debt due to the Crown pursuant to section 5.7(3) of the GSF Act.

6. Suspension or termination of the Package

- 6.1 Notwithstanding any other provision of these Terms and Conditions, DCS may, at its absolute discretion, suspend or terminate the entirety or any part of the Package at any time and for any reason, including suspending or terminating the provision of the Payments.
- 6.2 Any action taken to suspend or terminate the Package will be notified on the NSW Fair Trading website.

7. Limitation of liability

- 7.1 To the extent permitted by law, DCS (including its officers, employees and agents) will not be liable for any direct, indirect, incidental, special or consequential loss or damage or for any death, illness, personal injury, financial loss or property damage however caused (including by negligence) which may be suffered or incurred by a

landlord, landlord's agent, tenant or any other person arising directly or indirectly out of or in any way connected with the Package, including:

- (a) the unavailability of the Payment,
- (b) any breach of these Terms and Conditions, or
- (c) any decisions made to refuse an application for a Payment or to suspend or terminate the Package.

8. Indemnity

- 8.1 The Recipient agrees to indemnify and keep indemnified DCS (including its officers, employees and agents) ("those indemnified") from and against any liability or loss (including reasonable legal costs and expenses) which may be suffered or incurred by any of those indemnified by reason of or in connection with the Recipient's application for and receipt of a Payment.
- 8.2 A reference to "Recipient" in clause 8.1 includes the Recipient of a Payment which has been repaid to the Crown by the Recipient or which has been recovered from the Recipient by the Crown in a court of competent jurisdiction as a debt due to the Crown.

9. Contact

- 9.1 Any enquiry about the process or progress of an application is to be directed to Service NSW via NSW Services Centres or by calling 13 77 88.
- 9.2 Any complaint about the decision or handling of an application is to be lodged in writing with NSW Fair Trading by completing an [enquiry form](#) on its website.

10. General

- 10.1 A landlord, landlord's agent or Recipient is responsible for obtaining their own independent legal and financial advice regarding these Terms and Conditions.

11. Variation

- 11.1 DCS may amend, vary, delete or supplement these Terms and Conditions at any time by publication on the NSW Fair Trading.

12. Waiver

- 12.1 No failure or delay by DCS in exercising any right under these Terms and Conditions will operate as a waiver of those rights.

13. Severability

- 13.1 If any part of these Terms and Conditions is prohibited, void, voidable, illegal or unenforceable for any reason, then that part is severed from these Terms and Conditions but without affecting the continued operation of the remaining Terms and Conditions.

14. Governing Law

- 14.1 These Terms and Conditions are governed by, and must be interpreted in accordance with, the laws in force in New South Wales. A landlord, landlord's agent, Recipient and DCS submit to the exclusive jurisdiction of the courts of New South Wales and any court competent to hear appeals from those courts.

15. Survival

- 15.1 Clauses 4, 5, 7 and 8 contain continuing obligations and will survive termination of these Terms and Conditions.