

Fire and Emergency Services (Smoke Alarms) Amendment Bill 2015

Submission by:

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Little Real Estate are Queensland and Australia's largest Residential Property Managers

Smoke Alarm Testing Requirements

Our submission on the amendments of the legislation is principally based on the practical implementation of the Amendments, as well as highlighting the impracticality for investment owners (or their Agents) to function and abide by the existing Act. We completely support the installation of smoke alarms but with a practical and effective regime for testing.

The Problem - Section 104RD(1)

- The practical issue is around the performance of a smoke alarm test “within 30 days before the start of a tenancy in the dwelling.”
- The problem is not only an issue in the suggested amendments but there exists a current problem complying with this clause in the current legislation as well.
- The issue with the suggested amendment AND the existing legislation is twofold:-
 - It places a higher regime of testing of safety equipment in a tenanted dwelling than that of an owner-occupied dwelling, which is unreasonable on both fairness and economic grounds.
 - It places owners in the possible/probable scenario where they have broken the law due to circumstances beyond their control.
- The industry has never been clear as to whether the initial intent, when writing the current Act, was for a test to be undertaken within the 30 days prior to the start of a tenant first occupying a dwelling, OR the currently enforced interpretation of the Act which is:
 - for a test to be undertaken within the 30 days prior to the start of a tenant first occupying a dwelling; AND
 - within the 30 days prior to the renewal of every tenancy agreement i.e. the tenant has extended their Tenancy Agreement by 6 or 12 months

- Renewal/extension of tenancies for tenants was included because, under the definition of the word “tenancy” in the RTRA, a tenancy starts every time a new tenancy agreement is signed regardless of whether the occupants of the property have changed.
- The consequence of the prior point is that an owner (or agent on their behalf) may send out a new Tenancy Agreement for a further period of 6 or 12 months, the tenant in many cases will send the agreement back signed after the start date of the new tenancy. At this moment in time the owner has broken the law by not having done a smoke detector test.
- In the new section 207 (2) (b) it uses the language “residential tenancy agreement” which suggests that the legislation intends to see a “tenancy” and a “tenancy agreement” as two different events, however the moment you read 207 (3) it puts this differentiation back into doubt because the RTRA definitions are utilised.
- Owners understand that it is reasonable for tenants, when they are new to a property, to know that safety equipment such as smoke detectors have been tested and proven to be functioning correctly after the last tenants have left the property and prior to their occupation.
- Surely after the tenant has started their occupation of the property, the regime for inspection of smoke alarms should be the same as every other dwelling in Qld, that is once every 12 months.
- The practical and economic benefit of this is that Owners (or their Agents) can then check on smoke alarms when they do their inspection of properties which is a minimum of 12 monthly. Tenants are would still be protected to the same standard that owner-occupiers are protected.
- If the drafters of this legislation believe that greater checks on tenanted property smoke detectors are required because of the incidences of tenants removing batteries (from battery only devices), then this has already been remedied by the new legislation requiring 9v lithium powered 10 year battery life detectors. This is because it is not possible to remove the batteries from this new style of smoke alarm without destroying the Smoke Detector/Alarm, which is against also the law.
- The final issue with the implementation of this section of Act is getting the test done in the 30 days prior:-
 - It is believed that over 90% of rental properties in Qld are managed by Professional Agents

- Agents have taken the view that to test a smoke alarm, it must be done professionally (there are multiple companies setup to do this on behalf of agents) and tested in the following manner as required by most manufacturers
 - Press the test button
 - Clean the alarm from dust etc...
 - Test the alarm to ensure it triggers by smoke – this is achieved by spraying a can of fake smoke at a distance from the alarm.
 - Test the battery voltage to ensure it has adequate voltage to last 12 months or simply replace it with a new battery.

The testing done by Agents' contractors on behalf of Investor owners is superior than that done by most owner occupiers, who simply press the button.

- The change from one tenant to the next normally falls into one of the following:
 - The property becomes vacant and has a new tenant in the property within 1 - 2 weeks
 - This is the more common scenario and works on the 30 day prior regime as it allows the owner (in most cases through their Property Manager) to organise a contractor to test the alarm.
 - The property has a new tenant waiting and the tenant commences the day after the old tenant leaves the property
 - Whilst contractor can be booked in advance, there are plenty of cases where the arrangement fails and the contractor does the test a couple of days later.
 - There are also change-overs which happen on a Saturday and contractors are not available.
 - When markets slow properties can take 6 weeks or more to find a new tenant. Owners can never predict the time period of the vacancies but may organise a test of the smoke alarm straight after the last tenant vacates and have it expire in the case where the new tenant does not start until 5 weeks or more later. This then incurs the cost of a second inspection.

The Solution

All of the above issues can be resolved by changing clause 104RD (1) (b) to read

- (b) before or within 7 days of the start of a tenancy of a new tenant in the dwelling
 - (i) any test completed prior to the start of a new tenancy/ occupancy must be completed after the prior tenant/ occupant has handed back possession of the property to the owner.

The addition of clause (b) (i) has the additional benefit of making sure that any test before a new tenant occupies a property is not done whilst a previous tenant/ occupant is in occupation. This prevents the possibility that they can interfere with the smoke alarm between when the test is completed and when they vacate the dwelling.

The objective of the special tenant provision, I assume, has always been to give every new tenant to a dwelling a clean start to take over the occupancy knowing the safety equipment has been tested and nobody else (the previous tenant) has interfered with it. The above suggested amendment will still achieve this as well as a practical regime for owners.

For further information or explanation of the above Submission please contact

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