Inquiry into Improving Rental Laws in NSW

Keith Almeida

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Introduction

This paper serves are a response to the rental laws consultation put out by the NSW government. The feedback in this paper does not necessarily align with the questions asked by the NSW government, but rather provides general feedback on the high level categories that the NSW government has listed in its consultation paper.

No Grounds Termination

I can empathise with a tenant that is served a vacate/eviction notice. There is a personal, and financial cost of moving which is often undesirable. To overcome this, I am supportive of the law that the landlord cannot end a tenancy during a fixed term lease, except in exceptional circumstances. After all, it is a contract and the contract should be honoured by both parties, with penalties if the contract is broken.

Equally, as a landlord it is usually undesirable for a tenant to vacate a property. The landlord incurs both agent/advertising fees as well as lost rental income due to the property being vacant.

A rolling lease provides flexibility to mainly the tenant. The tenant can leave at any time, without reason, leaving the landlord with the cost of finding a new tenant. A small tradeoff in having a rolling lease, is that the landlord could evict the tenant. The landlord having to provide a prescribed reason to the tenant for eviction during a rolling lease makes as much sense as the tenant having to provide a suitable reason to the landlord for breaking the rolling lease.

As such, if there is no formal, yearly lease (contract) in place, I do not support the banning of no-grounds termination. A landlord may have any number of reasons for wanting the property vacated, and the government limiting the reasons mainly incentives the landlord to lie about the reason, rather than assisting the tenant in any meaningful way. Australia is a country with strong property rights, and property rights, by definition, means that you have the right to do what you will, with your own property.

Fundamentally, what the government is actually trying to do, is limit the ability of bad actors in the rental market, to cause inconvenience to renters. Information asymmetry is a big problem in the rental market, because prospective renters are not privy to the nature of the landlord, or the nuances of the property (e.g. hidden leaks, surrounding noise during parts of the day etc).

To help alleviate this information asymmetry, what I support is a public ratings system / database, where renters can "rate" and provide comments on their property/landlord, perhaps on a yearly basis. Here, the renter could comment on items such as :

- Landlords responsiveness to repair requests
- Reasonableness of Landlords rental increase
- Overall suitability of the property
- Whether the landlord evicted them for no reason

Ratings are a much more effective way for one party to trust another. They impose a cost on bad actors, which manifests as a financial cost. A landlord with a bad rating, will not be able to lease their property out for as much rent as a landlord with a good rating, all else being equal. There is a reason why websites such as AirBNB, Uber, Oneflare are so successful at getting two strangers to exchange goods/services with minimal.

Keeping Pets

A pet increases the risk that significant damage is done to a property. The variation in pet owners (and pets) is large, with some owners having well trained pets, and treating them like babies, where as other pet owners let their pets run wild, and mess up carpets/curtains/fixtures. It should be the landlords choice whether to risk the property having a pet or not. From experience, I usually let my tenants keep pets, but always ask the previous agent/landlord what type of pet owner the tenant was. Clearly this is more difficult if the tenant is getting a pet for the first time during a tenancy.

Once again, if the government has a way to reduce this information asymmetry – i.e. the landlord not knowing what type of pet owner their tenant is, I would be supportive of this.

Renters Personal Information

I do not support limiting the information that applicants can be asked for in a tenancy application. If an applicant is uncomfortable with providing certain documentation, they can apply for a different property. I am not familiar with the Victorian approach, but limiting the ability for a landlord to see whether a renter has taken legal action is quite frankly bizarre. Just as there are bad landlords, there are also bad tenants, and a landlord needs to assess whether a prospective tenant has had frivolous disputes with a rental provider in the past. Again, the governments role should be to reduce information asymmetry, not increase it. Clearly, it is more preferable for the landlord to make a decision on a prospective tenant, based on as much information as possible. As an example:

1. A landlord receives two applications for his property:
   a. A single mother with two young kids, on a low income
   b. A young professional, with good income

In the absence of any additional information, it is highly likely a landlord would pick b. However, if the landlord knew that in the past, applicant b. had a large number of legal disputes with previous rental providers, then they would most likely pick a. Limiting information on a rental application will not reduce discrimination, rather, it would mean that landlords would have to make decisions based on less information. This would likely increase discrimination based on very high level characteristics present in the rental application.

Something that I do support, is that certain government documents should not be misused. For example, there is limited reason why an applicants drivers licence should be sent/stored by the landlord.

Automated Decision Making

My views on this are similar to those in the previous section. More data to make a decision is surely better, not worse. Algorithms and AI, overall, make our life better and more efficient. It is the reason why tech giants can target us with adverts that are relevant to us. Similarly, the ability to sort and rank applicants in an automated fashion leads to increased efficiency and therefore improves the rental process s– assuming the algorithm is properly calibrated.

Portable Rental Bond Scheme

This is a great idea, and I am supportive of the scheme. The government has outlined risks with the scheme – including where renters need to topup the bond should the previous landlord claim it. This needs to be properly worked through but overall I think this is a great idea.

Excessive Rent Increases

I think this is a good idea in theory, where the government can collect, and provide data on rental increases in a suburb, as well as average rents in a suburb. However, there could be many flaws in this data – e.g. comparing rents with a house on a main road vs a quiet road, even though the houses are similar in every other way. Overall a tenant can currently achieve what the government is trying to do, by looking at realestate.com.au, but nevertheless, I am generally supportive of this initiative. The best way to collect this data, is probably via agents at an amalgamated level (e.g. suburb), or, simply by doing some analytics on domain/realestate.com.au data.

Other changes to improve rental affordability

I am generally supportive of once per year rental increases. People salaries/pay is generally reviewed once per year, so its reasonable for rents to be reviewed once per year.

I am not supportive of this idea of "excessive rents" or rents cannot exceed CPI. CPI itself is made up of many factors – e.g. petrol, clothes, childcare. It makes no sense that rent for a property cannot increase by more than X%, because the price of clothes dragged the CPI down in a year. In addition, the rental component of the CPI calculation (calculated by the ABS) is itself flawed, because it's a rolling 12 month average rather than an asking rent average.

In addition, every rental market is different. During the pandemic, we saw regional areas boom, as people moved there. Rental markets dominated by students collapsed. If we capped rents to CPI increases, then rents in regional areas would not be allowed to increase by much (i.e., supply and demand would not be balanced), but rents in student dominated areas would collapse. Distorting the market with essentially price controls is never a good idea.

Other changes to make rental laws better

Providing a free way to pay rent is a good idea, and surely bank transfer (or BPAY) is the best, free way to do so. I have no opinion on the other questions asked in this section.