

Submission re possible changes to Tenancy Laws

My name is Shane Spence, and I have been a licensed real estate agent for in the order of 30-years.

I wish to address some of the following topics under discussion.

Before addressing the proposed changes to Tenancy Laws, I make a general comment. There has been public discussion that housing is an essential service, not a commodity. Whilst I agree that housing is an essential right for all members of our community, I do not agree with the consequential link that a private landlord should be the supplier of essential services.

In Australia essential services are supplied by Governments not private philanthropy. I am not aware of when public housing or other essential services have been privatised.

We have examples of several sectors in our economy where private and public services operate side by side. Health and Education being the two prime examples albeit there are others. In both examples, it is clearly understood that the private sector does not operate like the public sector. Consumers have the option to choose which sector they will source their services.

Further we have many examples of privatisation, which fail the community many years after e.g., private certification of new dwellings.

These proposed Tenancy Law changes as with many before them, attempt to make the private housing market operate like a public housing provider.

A stronger public housing sector, with more investment in the number and quality of housing provided would go a long way to resolving the inequities experienced by those at the lower end of the market and would apply pressure on the lower end of the private sector to improve their game.

Removing 'no grounds' evictions

There has been much public discussion regarding removing a landlord's ability to terminate a tenancy without having to provide a reason for doing so. Much of this discussion in the media has reached hysterical levels.

At the end of each tenancy, Office Of Fair Trading send out a survey to managing agents (and no doubt to tenants and landlords) surveying among other things, the cause of the termination notice and which party to the agreement instigated the termination notice. From my observation of these results as shown at <https://data.nsw.gov.au/data/dataset/end-of-tenancy-survey>, setting aside those tenancies terminated at a formal NCAT hearing, an overwhelming majority of tenancies are terminated by tenants (who incidentally do not have to provide grounds for their termination notice – as they shouldn't have to). The number of terminations, which are instigated by landlords / agents, which are not dealt with by NCAT, is an absolute minority of cases. There does not appear any evidence that the use of "no grounds" terminations are being overused by landlords or managing agents.

I have not seen evidence, which should easily be collected by these surveys and data from Rental Bonds Online about new rents, as to whether landlords / agents are terminating tenancies to increase rents. I am sure it may happen however I am not sure there is an overwhelming occurrence of this happening to justify Tenancy Law changes.

I can imagine times when either party, to the agreement, may wish to terminate a tenancy in a non-confrontational manner. Not everyone, landlords, agents, or tenants play by the rules or the spirit of cricket. On such occasions, a "no grounds" termination notice provides an outcome where both parties can go their separate way without conflict.

Making it easier for tenants to have pets

I am unsure as to why there is a need to make it easier for tenants to have pets. Pets are nice but not an essential part of life. Not all tenants want pets or want to be impacted by previous occupant's pets.

I have managed properties for the best part of 28-years. In that time, I have never seen a property where a pet has been allowed to be kept, not suffer damage. There is no such thing as a bad pet but there are irresponsible pet owners.

Current tenancy laws regarding keeping pets are inadequate to protect the assets of landlords or tenants who do not appreciate the smells or other impacts left by previous occupants.

The property asset belongs to the landlord. The landlord should always have the right to determine who or what is allowed to live at the property. There are landlords who are prepared to allow pets into a property. There has been no proposal / discussion that may allow landlords to charge a premium rent (say a 5% increase) and / or require a pet bond of say 2 weeks rent (which is something regularly suggested by tenants) in return for a landlord's consent to keep a pet.

A significant part of a property manager's role is to ensure that a property is returned in good order for the next tenant. Unfortunately, steam cleaning, deodorising and flea treatments of carpets just do not cut it. The odour of urine comes back to haunt tenants who occupy properties after a dog or cat has vacated. Vic Health advises that, "[Fleas take four forms during their life cycle: egg, larva, pupae and adult. This cycle takes 2 weeks to 8 months depending on temperature, humidity, food and the type of flea species](#)".

Consequently, a tenant moving into a property where a dog or cat has previously lived, may be there unwary victim of urine smells and infestations, when they themselves may have chosen not to keep a pet.

Improving protection of renters' data and privacy

I am not a fan of third-party tenancy application forms and certainly not as they currently operate. Personally, I have opted out of using these services or responding to these rental requests. They are not easy to use, intrusive and do not work well for individuals who are a round peg trying to fit into the square holes of many of these application formats.

1. Third party providers of application forms are not licensed real estate agents; they are just trying to create a space to commercialise this process at the tenant's expense. If landlords / agents see the necessity to complete a search of a tenants "credit history" they should be the ones to pay for it; not the tenant. There should be no charge at any point for a tenant in the application process.
2. There is currently no oversight as to the level of security these operators maintain on data collected. If I was an overseas hacker, I would be targeting these providers to steal personal ID's.
3. There is currently no provision for tenants having the option of submitting a paper applications or having that application considered on an equal basis as an online application.
4. There is no standard application form either paper or online; which should be the same.
5. Why as a real estate agent am I receiving the private data of several candidates if I have no intention of proceeding further with their application. Unless I have a genuine interest in a particular applicant, I have no right to see any additional information other than a summary of their details, as may be provided on a paper application form. If I have meet with several potential tenancy candidates, have issued applications or invitations to apply and have in mind one or even two potential candidate, I do not need copies of passports, Medicare cards, driver's licenses, pay slips etc from every candidate. I will want some or most of this information but only from a successful applicant.
6. I have issues with the format of privacy statement signatures.
7. I have issue with third party operators requesting a reference for a tenant before the tenant has actually applied for a property and I do not know which agent / landlord is receiving the information requested of me.

Implementing a portable bond scheme

This proposal would be of great benefit to tenants however landlords need to be protected by the Rental Bond Board / government guaranteeing any shortfalls and debt collecting of unpaid bonds.

Rental affordability

The rental market goes up and down. When I first started in the industry gross rental returns were accepted as being 5% PA. Whilst these gross yields may still be available in regional areas of NSW they are not in popular areas of Sydney where rental returns for units are down below 3% PA and for houses around 2% PA.

I understand the Federal Government recently went to the Superannuation Industry inquiring if they were interested investing in the housing rental market. The answer came back with a resounding no unless the Governments were prepared to provide significant tax support.

<https://www.smh.com.au/money/super-and-retirement/why-super-funds-may-be-hesitant-to-invest-in-australian-housing-20220907-p5bg5r.html>

I also note that private investors were expected to support tenants during Covid. Whilst land tax relief was provided to some landlords, not all landlords were subject to land tax. The majority of landlords own one property which places them below the land tax threshold. Whilst landlords were pressured to provide this support, the same pressure was not applied to other suppliers of goods and services.

I had several examples of landlords whose primary or significant source of income was from rental income, where tenants who were earning way more in wages but were asking for rental relief on the basis of reduced income during Covid.

Rent freezes and rent increase restrictions will diminish the supply of rental properties. Let us not hope that we go back to the days of Protected Tenancies, which served no one.

Similarly, rent subsidies paid to tenants to assist them to compete in the open market increase demand.

A new way forward needs to be established. Paying landlords direct for dedicated properties purchased for low income rental accommodation, where the rent paid by the tenant is pegged at a level below market may be a way to increase low income rental properties without increasing demand.

In the market in which I operate (which is a high income area) the rental market since 2018 has only increased by 0-2% PA. A long way short of being an out-of-control market needing reform. I suspect that a lot of the rental increases currently being seen, are in part a catch up from the Covid period. Whilst this does not make it any easier on low income tenants facing other cost of living increases, neither is it cause to hit panic buttons, which may have long term negative consequence to the supply of investment properties.

Having said all of the above, I see no reason not to restrict rent increases to once per 12-month period to market rent.

Other issues

Landlords Representation

I note that NSW has recently appointed a Rental Commissioner. I also note that the Tenant Union is funded from the Tenants Advice and Advocacy Program administered by NSW Fair Trading, using money from the Rental Bond Board Interest Account and the Property Services Statutory Interest Account.

Landlords as distinct from agents, do not have a Landlord Commissioner nor a Landlords Advocacy group funded from public moneys. Landlords need better representation to advocate for their dealings with:

- Government, both at state and council level. To advocate for changes to tenancy laws just as the Tenants Union is no doubt doing with these proposed changes.
- Real estate agents. Potential changes to the Property Stock & Business Agents Act.
- Strata Agents. To protect their interests by make strata managers and owners corporations more accountable and responsive to the Residential Tenancy Act.

- Insurance Industry to ensure this industry provides products consistent with the Act for both Landlord Insurance and Strata building insurance.
- Banking industry

Transparency

There is a question of transparency regarding issues, which may need to be disclosed to a new tenant, such as embedded networks. This needs to be done prior to signing a lease agreement. Either, at the time of offering the property to a potential tenant or issuing an application form.

My current practise is to disclose as much information as possible at the time of offering a potential tenant a property for lease. At this time, I give them a detailed "welcome" letter together with a draft copy of the Residential Tenancy Agreement (RTA) and draft copy of the Condition Report. I allow them with a time frame by which time they need to accept the offer (generally 24-hours), considering the information I provide. A final version of the RTA and Condition Report is provided for signing after a holding deposit and bond has been paid.

Strengthening laws about free ways to pay rent

If a tenant chooses to pay their rent by Internet Banking transfer direct to an agent's Trust Account, there are no or at least very minimal bank fees incurred.