Consultation

Improving NSW rental laws

Submission

by

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Recommendations

The author makes the following recommendations to improve NSW rental laws:

1. Keep "no grounds" termination legislation as it currently is but require two weeks rent to be paid as compensation to the tenant when used.

2. The landlord can nominate if a property is suitable for pets at the time of letting and if it isn't then they have the right to refuse having a pet.

3. In properties where a pet is kept the landlord should be able to take an extra bond of additional damage the pet may cause.

4. NSW government place on the national cabinet agenda an item to expand the above Privacy Regulation 2013 to include all organisations handling residential tenancy data.

5. The government needs to implement an awareness and training program to ensure all parties involved in the handling of tenancy data are aware of good practice in data handling and their current and potential future responsibilities under the Privacy Principals.

6. Portable bond system should be implemented which allows current tenants to use their equity in existing bond to fund new bonds with Bond Board guaranteeing bad debts.

7. Do not implement rent controls. Rents should remain being set by market conditions. Any introduction of rent controls will immediately reduce vacancy rates and increase rents.

8. Private landlords should be able to gain Land Tax exemptions for properties where they rent to affordable housing tenants at typical affordable housing rents and the property is managed by CHP.

9. The NSW government should set appropriate price protections for all customers supplied electricity, gas or hot or chilled water through an embedded network. These prices should not be more than the default or average price in the market and service levels should be the same.

10. The tenant should always be able to pay their rent by EFT to a nominated bank account or Cash at nominated location and time.

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1 Author Background

The author of this submission controls a significant private rental portfolio in the ███████████ and ██████████ of Sydney and has been involved in the residential rental market for over 50 years.

2 Removing 'no grounds' terminations

The use of "no grounds" terminations should only be allowed for periodic leases and should require the landlord to pay compensation to the tenant. I believe two weeks rent would be adequate compensation. The introduction of compensation should be sufficient incentive for the landlord not to use this type of termination indiscriminately.

3 A new model for keeping pets

The main issue with pets is the question of whether the rights of the few should over ride the rights of the many. A pet that is poorly cared for will reduce the living amenity of all other tenants in the property and almost certainly cause more damage than the bond will cover.

The simple fact is most rental properties are not well designed for pets particularly dogs. I personally have owned dogs and consider myself a dog lover. However, I have seen some tenants keep dogs locked inside while they are away and the dog destroys the property and disturbs all the other tenants.

The damage caused by animals can be extensive and not that obvious. Just cleaning carpet in many cases does not remove the smell of a dog that has been living in a unit and sleeping and urinating on the carpet. In several cases I have had to replace the whole unit's carpet after the tenant has left at my expense as the cleaning did not remove the smell and the bond was not adequate.

Some units are better suited than others for keeping animals and the landlord should be able to nominate if the property is suited for a certain type of pet at the time of letting. The tenant should not be able to just bring a pet into a property which is not suitable for the pet.

4 Renters' personal information

This is a difficult issue.

Most information provided by prospective tenants and tenants is provided electronically over or onto relatively insecure environments. Unfortunately, the package of information provided by a typical prospective tenant is extensive and valuable. Often, I will receive pdf documents with images of driver's licence, passport, bank statements and pay slips. This information would be gold for a hacker.

Currently the federal Privacy Act covers private sector organisations handling information. This act is more than sufficient to deal with the privacy issues faced for residential tenants. Unfortunately, the act does not cover organisations with turnover less than $3M pa. which would mean many real

estate agents and landlords would not be covered. However, it does address some aspects of the residential tenancy data in the Privacy Regulation 2013[1]. See below extract.

> **7 Small business operators treated as organisations**
>
> *Small business operators that operate residential tenancy databases*
>
> (1) *For subsection 6E(2) of the Act, a small business operator that operates a residential tenancy database is prescribed.*
>
> (2) *For subsection 6E(2) of the Act, the following acts or practices of a small business operator of the kind mentioned in subsection (1) are prescribed:*
>
> > (a) *an act done, or a practice engaged in, in connection with collecting personal information for the purpose of establishing or maintaining a residential tenancy database;*
> >
> > (b) *an act done, or a practice engaged in, in connection with maintaining personal information on a residential tenancy database;*
> >
> > (c) *an act done, or a practice engaged in, in connection with using or disclosing personal information that is stored on a residential tenancy database.*

Unfortunately, this legislation does not cover in a comprehensive manner all the parties currently handling tenancy information. I would suggest the NSW government place on the national cabinet agenda an item to expand the above Privacy Regulation 2013 to include all organisations handling residential tenancy data.

Legislation is not enough. The government needs to implement an awareness and training program to ensure all parties involved in the handling of tenancy data is aware of good practice in data handling and their current and potential future responsibilities under the Privacy Principals[2].

5 Portable rental bond scheme

The idea of a portable rental bond is undeniably a good, however implementation is difficult.

The premise of the current system is that a principal tenant will take responsibility for the bond in full and will distribute refunds to other tenants as agreed. The current bond system does not know what the equity of other tenants have in the bond held. Also under current arrangements the bond must be paid before the lease is signed and the bond is not released before the exit inspection is completed and any deductions agreed and/or made.

Typically, a tenant moving properties cannot get back their bond until a few weeks after they have to provide a new bond for their new property. This means for a short period of time the moving tenant will have to fund two bond amounts. This is often challenging for many tenants.

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[1] Privacy Regulation 2013
https://www.legislation.gov.au/Details/F2023C00490
[2] The Australian Privacy Principles (or APPs) are the cornerstone of the privacy protection framework in the Privacy Act 1988
https://www.oaic.gov.au/privacy/australian-privacy-principles

However the implementation of a portable bond scheme which fully addresses the above issues is difficult because it would require the bond system to be expanded to capture data about all tenants and their bond equity. When you examine the range of user cases required to accommodate all portable bonds the following scenarios must be considered:

1. The principal tenant is the only tenant and they move to a new property where they are the only tenant.

2. The principal tenant is the only tenant and they move to a new property where they are one of several tenants.

3. The principal tenant is one of several tenants and they move to a new property where they are the only tenant.

4. The principal tenant is one of several tenants and they move to a new property where they are one of several tenants.

In addition to the above transferable bonds must consider additional factors such as:

1. When bond values are different between old and new properties and how to deal with the payment of differences and the risks of non-payment.

2. When the old property or new property tenancy is on going and other tenants are involved.

As can be seen above there are a range of factors involved in implementing a portable bond scheme which is not present in the current scheme. It should be noted the current scheme works well but it does require tenants to fund two bonds when moving.

The only viable solution I can see for a portable bond system is for the current system to be retained but the tenant is allowed to sign a lease without a bond payment actually being made. This means the moving tenant can use their equity in the existing bond to secure their deferred bond payment the new property.

This approach can be implemented by a relatively simple change to the current system where a moving tenant can nominate their bond in the old tenancy as security for their bond payment in the new tenancy. Once they have made this nomination the landlord can sign the lease.

The tenant should then be given a period of time to pay the new bond amount if it is not paid in a reasonable time then the Bond Board can refer the debt to State Debt Recovery. The landlord will be indemnified by the Bond Board for the amount of the unpaid bond when the bond is to be paid out if the tenant has not paid the bond amount by that date.

6   Excessive Rent Increases

There has been a lot of concern over the last twelve months about rent rises being excessive. This is because rents have risen on average across Sydney by 19.6% over the past 12 months. It is understandable that tenants are feeling the pain of this rise in rent as it appears to be excessive. However, when put into context it is not unreasonable. The rental growth for the preceding period

during covid was actually negative and the growth over the past 10 years has only been 3.9% pa, which is less than the capital growth of most properties[3].

Rents are set by landlords to meet the market. Currently most landlords in NSW are private investors who are willing to accept rents well below interest rates they are paying on loans. They do this because they are hoping for capital growth and they are using negative gearing and land tax threshold to offset low returns.

There is very little corporate investors doing build to rent (BTR) in the rental market because returns are so low. If government does anything to shake the confidence of private investors in the market they will sell and the market will even become tighter with lower vacancy rates.

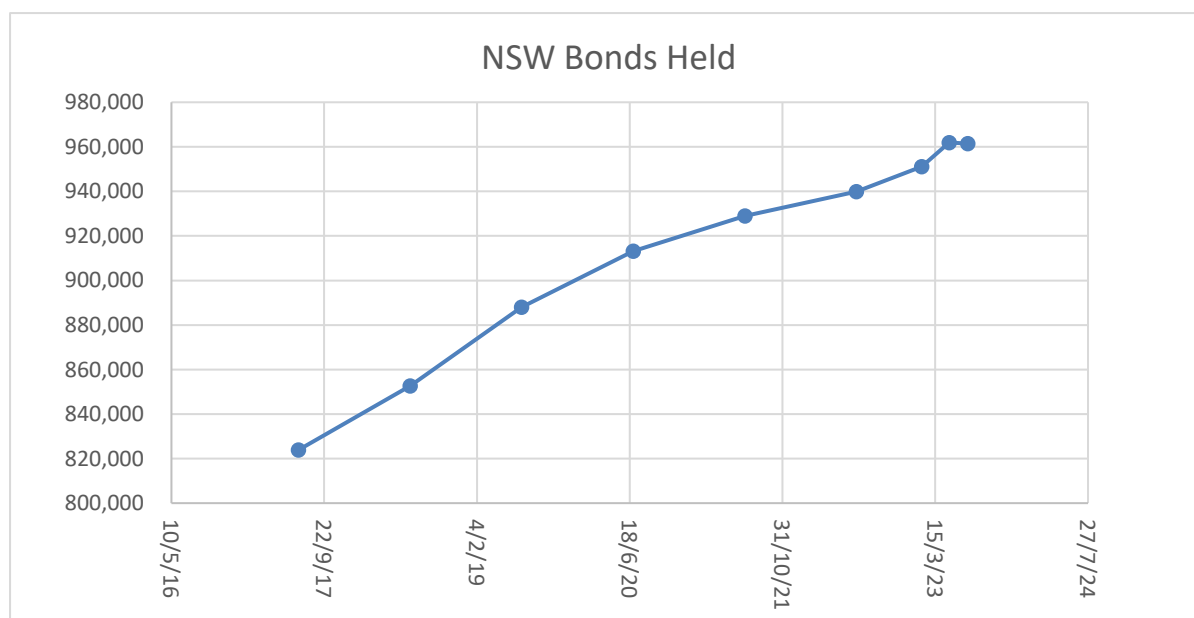# 7   Improve Rental Affordability

There are many factors affecting rental affordability. The sections below identify the most important factors. These factors are of particular importance in higher property value areas like the eastern suburbs, inner west and north shore of Sydney.

7.1   Supply and Demand Factors

NSW has since June 2022 experienced a very unusual housing environment. Below is a summary of the changes in supply and demand.

7.1.1   Rental Supply

The rental market is currently supply constrained. The graph below shows the bonds held in NSW since 2017. Bonds are a good indicator of properties being rented. The data clearly shows

NSW Bonds Held

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[3] SQM WEEKLY RENTS Sydney
https://sqmresearch.com.au/weekly-rents.php?region=nsw-Sydney&type=c&t=1

Date	NSW Bonds Held	Source
30/06/2017	823,901	
30/06/2018	852,596	
30/06/2019	888,009	Bond Board Annual Report FY 21-22
30/06/2020	913,091	
30/06/2021	929,015	
30/06/2022	939,899	
30/01/2023	951,030	Bond Board Data
30/04/2023	961,946	REINSW
30/06/2023	961,471	

Interest Rates are a big factor affecting supply. Most landlords are small investors who are negatively geared. This type of investor is very sensitive to interest rates. Many agents are reporting that their rent roll is decreasing as landlords are forced to sell because they cannot pay the interest on their loans.

Build to Rent (BTR) is not a viable option in most of eastern seaboard of Sydney due to the low yields and is very unlikely to be an option in the more expensive suburbs in Sydney unless land tax offset incentives are introduced for tenants who qualify for affordable housing.

7.1.2   Increased Demand

The ABS says that NSW population grew 73,070 from 1/7/22 to 30/12/22[4]. This is the largest growth in population NSW has ever experienced. The Centre for Population Projections identified that Australia had a Net Overseas Migration (NOM) of 401,700 in FY 22-23[5]. Given previous migration trends it can reasonably be assumed that about 150,000 to 200,000 of these people went to NSW and most to Sydney. This is the largest growth NSW has ever experienced in a 12 month period.

This increase demand will not continue because it is largely due to an increased NOM which is expected to move back to previous rates of about 250,000 pa. Notwithstanding this the more expensive suburbs in Sydney will experience significant rental pressure for many years to come.

7.1.3   The Future?

If the government wants lower income key workers to be able to live in more expensive suburbs in Sydney, then concessions will need to be made to accommodate the high land tax in these areas. Currently community housing providers get land tax exemptions which allows them to offer rentals at less than current market value.

Currently NSW government allows Land Tax Exemption for Land Used and Occupied Primarily for Low-Cost Accommodation[6]. This exemption sets rents at an impractically low level and limits the

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[4] ABS, Population - states and territories, Quarterly population by sex, by state and territory, from June 1981 onwards
https://www.abs.gov.au/statistics/people/population/national-state-and-territory-population/latest-release#scope
[5] Centre for Population Projections, Budget 2023-24: population projections, Australia, 2022-23 to 2033-34
https://population.gov.au/data-and-forecasts/projections
[6] Exemption - Land Used and Occupied Primarily for Low Cost Accommodation

exemption to 5 km from the GPO. If the government was to broaden the geographic limits to cover all high-cost council areas which affordable housing tenants need accommodation and if the level rent is increased to be comparable to those charged by Community Housing Providers (CHP) then many more landlords would be able to offer their property as affordable accommodation. I would also suggest that a CHP should be required to be the agents used to select tenants and manage the tenancy for all of these Lands Used and Occupied Primarily for Low-Cost Accommodation.

8   Embedded networks

The rental applicants should be told about embedded network services before they rent a property, including in the advertisement.

In theory, consumers in an embedded network can choose to buy electricity from an alternative energy retailer. However, it is often difficult - if not impossible - to outsource power because of the embedded network's wiring and associated charges. In an embedded network electricity is supplied by an energy retailer to the 'parent' smart meter. It is then on-supplied through the network to a series of 'child' accumulation meters – the meters that measure the electricity used by consumers. These meters do not usually meet the required standards and are not registered with the National Metering Database, which is why energy retailers are unlikely to agree to supply[7].

The NSW government should set appropriate price protections for all customers supplied electricity, gas or hot or chilled water through an embedded network. These prices should not be more than the default or average price in the market and service levels should be the same.

9   Free ways to pay rent

The tenant should always be able to pay their rent by EFT to a nominated bank account or Cash at nominated location and time.

The landlord or agent should not be able to force payment through a third-party provider who takes a fee. If the landlord or agent chooses to force a tenant to use a third party provide that charges a fee the landlord or agent should pay the fee i.e. it should be at no cost to the tenant.

10 Renters moving into strata schemes

The current laws are adequate.

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https://www.revenue.nsw.gov.au/help-centre/resources-library/rulings/land/lt114
[7] Tenants' Union of NSW, Embedded networks leaving renters disadvantaged
https://www.tenants.org.au/blog/embedded-networks-leaving-renters-disadvantaged