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Residential Tenancies Amendment (Rental Fairness) Bill 2023

Select Committee on Residential Tenancies Amendment (Rental Fairness) Bill 2023
Parliament of New South Wales

Submission from The Property Owners Association of NSW Inc

BACKGROUND

The Property Owners Association of NSW has been the peak body representing the interests of the private residential accommodation providers in the NSW market since 1951.

We thank you for reaching out to us to submit. The submission was prepared by the POANSW committee of management who are owners of short to long term residential accommodation across the Sydney metropolitan marketplace and throughout NSW. The committee comprises licensed real estate agents, valuers, rooming and boarding house operators, boutique hotel operators and single to multiple investment property investors who either self-manage their own tenancies or engage property managers to do so. Residential tenancies consist of 35.4% of the NSW population who are either renting or landlords.

The Residential Tenancies Act 2010 and its regulations require review to meet tenancy challenges to reduce the pressures of housing in NSW.

These pressures include:-

1. Rapid rise in housing prices during the last decade of Australia's biggest housing and construction boom especially in the Sydney metropolitan area and other parts of NSW.
2. Inability of many people to fund their own a home, especially first home buyers who are attempting to move from the rental market and become owner occupiers.
3. Restricting the supply of rental properties which places pressure on rising rents due to the lack of capacity of private citizens to own more than one investment property.
4. Restrictions and challenges surrounding the new financial environment post APRA and Royal Commission interventions as well as recent RBA/banks moves on rates.
5. Lack of planning and inability of the State Government to expand the private, affordable and social housing supply to match the needs and demands of those seeking to occupy state and privately owned rental properties.

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SCHEDULE 1 1 (1)

- (a) POANSW committee agrees in principle to a landlord or their agent advertising a premises with a fixed price and not other methods such as offers, price ranges or practices such as advertising a rental property with "contact agent"

- (b) POANSW committee agrees in principle to the intent of this clause however it is not clear as to the definition of who is the “person” in this clause i.e. is it the agent, tenant or landlord or possibly prospective tenant? It is unclear.
- (c) POANSW committee strongly disagrees with this clause. It is problematic in the practical day to day running of a property portfolio business and is counterintuitive approach which will result in the direct opposite affect of its intent and purpose which is to prevent “rental bidding” The sheer time consuming affect of having to disclose offers made by a potential tenancy applicant over and above the asking price made by the prospective tenant is cumbersome, will result in a rental bidding war and in turn will create a “Dutch auction” Can you only imagine in this strong rental market where there can be a dozen rental applications supplied on any given rental property that an agent/landlord has to manage communications with all these prospective tenants disclosing offers and counter offers. That would be a ridiculous burden placed on anyone in residential tenancy management. We can also envisage the return of rental bidding Apps into the marketplace who will see this as an opportunity to profit from such management processes.
- (d) POANSW does not fully understand the intent and purpose of this proposed clause and the need for another open home. Who is driving or setting the market rental value here? Is it the tenant or the owner of the property? What happens if a prospective tenant makes an offer, then withdraws their offer or declines to proceed with the property? Why should the owner of that property accept that their offer be accepted as fair market value? when in fact it could be over value or under value, who really knows and at the end of the day we make a point here that the property owner and their agent should be in control of when, how and why they set a certain amount of rent for their own rental property and for rental value not be driven by a prospective tenant.
- (e) Agree

SCHEDULE 1 (2)

No issues

SCHEDULE 1 (3) and (4)

POANSW has not been supplied with any information or details surrounding the proposal of a rental bond roll over scheme. We require information and a consultation process on this front.

Though we understand the end goal of the portability of a rental bond may be desirable by tenants as to not tie them up financially, the idea itself on a practical level seems like a cumbersome, confusing area of litigation and impracticalities exposing the Rental Bond Board to liability and huge cost of developing the technology to pull off something like this via digitalization.

Points and Remarks on crucial matters

1. require reasons for why landlords can terminate a lease

The POANSW is of the belief that a termination usually carries with it a reason to terminate. Despite the termination being called a “no grounds” or a no reason notice as it is portrayed at times in the media, there is always a reason to terminate a tenancy by the property owner. The reasons are often:

- A. To renovate/upgrade the property
- B. To occupy it themselves
- C. To sell it with vacant possession
- D. To derive other sources of income from it eg turn it into short term lettings, rent by the room conversion or owner/tenant co-living.
- E. Discretionary reasons to terminate a tenancy that ordinary proof of evidence is difficult to obtain or the property owner does not want a confrontational situation with the tenant to arise as a result of some key eye witness evidence. Eg illegal drug use, domestic disturbance, hostility or violence towards the owner or other tenants/occupants.

For the very reason of point E, we would strongly advise that the no grounds termination period remains in tact as a last resort to trigger a termination whereby ordinary proof of breach can be difficult to obtain.

2. make it easier for renters to keep pets

POA believes the current provisions by individual property owners and Owners Corporations are an adequate system that is working in the market place to accommodate pets in property. No further changes or expansion of the legislation is necessary. In saying that POA objects to any laws that enforce the property owner to accept pets without the right to objecting. After all it's the owners property and they shall have the final say in whether or not they risk keeping a pet. We have previously proposed the idea of extending the rental bond amount to include a further 4 weeks rent equivalent to dampen the risk of keeping of a pet and this is something that should be revisited as a point of discussion in these reforms.

3. protect renters' personal information and privacy

Though POA acknowledges the importance of protecting personal information and privacy of tenants, it is crucially important that the landlord or their agent retains the ability to collect personal information pre-tenancy to verify the potential tenant, also to collect financial information for the purposes of evaluating ability to meet rent each week and also to retain personal information for at least 3 years post tenancy. We have all heard of the disaster stories, trashed property, illegal use of property, abscondment and criminal activity inside rental property comes par and parcel with the business of providing rental accommodation. A landlord should have the right to easily access personal information, so should higher authorities like the police and ATO as well as insurance companies pursuing 3rd parties for damages/liability. Current protections and limitation in place under RTA laws and privacy laws are adequate and this section of the regulations should not be tampered with.

4. make the system fairer in other ways. Read below closing remarks.

CLOSING REMARKS

These updated reforms have little substance to address the issue at hand....a rental property shortage. That is, NSW has more more demand than supply.

From previous discussions within our organisation and data search about rental stock, the reality is that investor stock is slow to move, and difficult to measure. Changes made today, will only have an impact in 5 or 10 years time. It can only be looked at as trends.

Investors don't simply have a bad experience with a tenant or unfavourable tax outcome and then decide to sell immediately. It is a much slower and more cumulative impact than that. At the same time tenants who have a poor experience with a landlord or agent suddenly do not stop renting and go out and purchase a property. In majority of cases they continue to rent. The impact is only seen at the point of entering the market, not exiting.

The question is not does some new policy mean I will sell my investment property - of course not. The appropriate questions is, if I have capital to invest (be it from the sale of an investment, or some other source), will I choose to buy a rental property, or invest in some other asset? Historic bad experiences and stress today, will affect my decision when I next make a major investment decision - in 5- or 10-years time.

We have members now who have capital, some from sales of properties, and some from other sources, who have had a bad historic experience with a tenant, or a tax outcome in the residential sector, and have said they will never buy another residential investment property again. They aren't selling their assets but are choosing not to invest anymore in that sector. This is pronounced when the competition for capital is so fierce now, when you can get a government bond for 4%, a good corporate bond for 6%, and even a term deposit with a major bank is circa 5%.

To keep existing rental stock in the market, many of our members have had to deal with significantly higher holding costs. Primarily due to higher interest rates costs, but also because of increased insurance, tenancy reform compliance costs and now the recently introduce & more broadly reaching land tax costs.

The NSW Government is discriminating against property investors, treating us differently to other small business owners in NSW.

We acknowledge rents are rising, however there is no evidence of systematic price or profit 'gauging' occurring. The vast majority of rental increases occurring can be supported by significantly increased holding costs as a result of over compliance costs to meet ongoing expansion of regulations and lack of supply.

Some investors will sell up – fed up with the ever-increasing costs. Some investors will switch their properties to short-term rental, away from long-term rental markets.

Less private investment - Some new investors will boycott investing in NSW, in the short term, taking their investment dollars to alternative state or territory property markets, with 'favourable' investing conditions & more 'accommodating' governments looking to attract more mum and dad private investors and adding to rental supply in that market.

Reduced Rental supply, increased household density per investment property & increased risk of more homelessness are all very real outcomes.

Here is a quote from one of our members:

"I can't believe the short sightedness of government, laws now favour tenants way too much I haven't been given a fair go at tribunal as they side with tenants all the time regardless of the issue as they see them as the underdog. The system is broken!"

The way I see it x 2 less rentals in western Sydney (these properties were built as rentals and have been rentals for 30+ years).

I know a lot of people selling up they have also had enough - better places to put your money with less headaches and government intervention".

The current "broken system" which indeed it is, is the situation of the culmination of poor housing reform in the past and poor policy which does not work in the marketplace. So here we are today in a crisis.

The POANSW, in existence since 1951, has worked with NSW Government on the legislative front with a focus on achieving equitable and balanced outcomes for all stakeholders. Though some effort has been made to achieve those objectives from legislators we do raise very strong concern with matters raised in this new amendment Bill which we believe has been rushed, practicalities not discussed with stakeholders that will cause the reverse effect of its intent and purpose which is to offer some fairness and relief in a rental crisis. We can only hope these consultation processes are taken more seriously with proper and adequate stakeholder consultation periods.

The POANSW executive committee would like to thank the minister and subordinates for participating in this submission.

Yours Faithfully,

The POANSW executive committee