Improving NSW Renting Laws

Submission of The Blue Mountains Tenants' Advice and Advocacy Service

The Blue Mountains Tenants' Advice and Advocacy Service (BMTAAS) provides advice, advocacy and representation to tenants in the Blue Mountains.

We welcome the proposed changes to NSW Renting Laws, particularly those addressing no grounds evictions, the keeping of pets, the protection of personal information and rental affordability, but think it vital that these changes are done in a way that ensures fairness to all parties.

BMTAAS works closely with the NSW Tenants' Union, our resourcing body, which has put together recommendations in responses to the consultation paper, based on consultation with Tenants Advice and Advocacy Services, such as BMTAAS, across the state. For this reason, our submission has relied heavily upon these recommendations.

BMTAAS is particularly concerned with ending unfair evictions and rental affordability and would like to address these briefly first.

Ending Unfair Evictions

We want to make it clear how important this issue is to our clients and thank the NSW Government for making these reforms.

While the Residential Tenancies Act 2010 (the Act), provides rights and obligations to landlords and tenants, these rights and obligations are fundamentally undermined by the landlord's capacity to issue no grounds evictions in retaliation to a tenant pursuing their rights.

Our clients, in both fixed term and period agreements, regularly will not take action when a landlord has failed or is failing to abide by a requirement under the Act for fear that they will be issued with a no ground eviction.

We also have clients who do take action, only to find that they are issued with a no grounds eviction. The protection against such action provided by section 115 of the Act is weak for a number of reasons: the difficulty in proving the notice was retaliatory; the Tribunal procedure (matters often do not proceed to formal hearing till the notice period is almost up – creating a lot of anxiety for our clients) and the fact that refusing to terminate is purely discretionary (a Member 'may' not 'must' refuse to terminate if a notice is deemed retaliatory).

We strongly believe that reasons should be provided to end both fixed term and periodic agreements and that proper consider consideration should be given to ensuring that the

new laws and reasons relied upon do not allow misuse by unscrupulous landlords (see Q1 – Q5 below, plus ADDITIONAL ISSUES for further details).

Rental Affordability

Market rent has been rising at a rapid rate in recent years and the current legislation does little to regulate it. This is causing a huge amount of financial strain on our clients, which has a flow on effect to all aspects of their lives.

We urge the NSW Government to give serious consideration to implementing the suggestion at 8.3 of the consultation paper to introduce a law that requires *'a landlord to prove that a rent increase is not 'excessive' where, for example, a rent increase exceeds CPI over a certain period'* (see Q30 below for further details).

Q1. What is your preferred model for ending fixed term leases and why?

Ending fixed term and periodic no grounds evictions

We welcome the proposed changes to end no grounds evictions, but want to really emphasise that **if the new laws do not bring an end no grounds evictions for both periodic and fixed term agreements, they will not address the problem of retaliatory evictions, and possibly make it worse**.

If landlords can continue to issue no grounds evictions for fixed term agreements, we think it likely that it will become standard practice to issue an end of fixed term no grounds notice for every fixed term agreement signed. If the tenant doesn't make things difficult, a new agreement will be signed at the end of the fixed term. If they do, they will be required to vacate as per the notice.

It has been brought to our attention by the NSW Tenants' Union, our resourcing body, that in other states where these reforms have not gone far enough, renters have continued to face insecurity and eviction for retaliatory or discriminatory reasons.

> *In Queensland, for example, only ended 'no grounds' evictions for renters on periodic agreements, introducing 'end of a fixed term agreement' as a prescribed reason for ending a tenancy. Advocates in Queensland report landlords and their agents have taken advantage of this loophole to shift renters onto shorter term fixed-term tenancies – for instance, 6-month agreements – so they can continue to evict without grounds. Tasmania similarly limits 'no grounds' evictions to the end of fixed terms. Around 84% of renters in Tasmania are now on fixed term agreements, preserving the ability of landlords to end agreements every 6 to 12 months.*
>
> *In Victoria, reforms to get rid of no grounds came into effect in March 2021. They have disallowed the use of 'no reason' terminations, except at the end of the first fixed term. This model creates an incentive for landlords to increase the churn of tenancies in order to ensure they always maintain control over the premises. We are*

aware many landlords consider the first term a probationary period, placing extra pressure on renters early on in their tenancies not to 'rock the boat' or assert their rights. In NSW introduction of reforms along the lines of the Victorian model would mean over 300,000 - or up to 1 in 3 renters - would still be at risk of eviction for no reason (an eviction without grounds at the end of the first fixed term lease) each year.

For these reasons, it is vital that landlords be required to provide a reason to end a rolling (periodic) lease and a fixed term lease.

Q2. Are there any other specific situations where a landlord should be able to end a lease?

The Consultation Paper suggests the following grounds be added as reasonable grounds for eviction, to replace 'no grounds':

- *The property will soon be sold*
- *The property will be renovated or repaired*
- *The landlord wants to use the property differently*
- *The property will be demolished*
- *The landlord or a member of their immediate family is going to move into the property*

We believe that if the reasons allowed to terminate an agreement and the evidentiary requirements for these reasons aren't given serious thought and and properly addressed in the legislation, that these changes will not properly resolve the problem of retaliatory evictions.

The property will soon be sold

We do not think that this reason should be included. A landlord can currently terminate an agreement if they have entered into a contract of sale requiring vacant possession. Often new landlords are investors and are happy for premises to be tenanted, making the uprooting of families unnecessary.

We do not think that uprooting a family to make it easier for a landlord to sell a property is fair. This is effectively causing multiple people (men, women and children) to experience a huge amount of distress and inconvenience, in many cases effecting their work and schooling (or travel to work and schooling), so that one person can more easily make a profit.

If this reason is to be included, we urge the government to consider provisions to ensure that it is not misused. We refer again to information provided by our resourcing body:

> *In Victoria, Queensland and the ACT landlords are able to end a tenancy during a periodic lease or at the end of a fixed term lease if the property is sold or is to be sold. In Victoria and the ACT landlords are required to provide evidence they genuinely intend to sell the property. In Victoria they are required to provide at a minimum a contract of engagement/authority to sell with a licensed estate agent, and in addition they are restricted from re-letting the property as a residence for six (6) months. In the ACT there is no prescribed evidence, only examples of evidence that might be sufficient including a statutory declaration. In Queensland there is no requirement to provide documentary evidence when serving the notice, though penalties apply if the landlord is found to have provided false or misleading information when serving the notice. Queensland also places a temporary ban against re-letting for six months when this reason is used to terminate a lease.*
>
> *While temporary bans provide a disincentive to misuse or casually use the 'intention to sell' reason, this is limited by existing challenges in enforcing such a restriction (see further discussion on this below). Similarly, the failure of regulators to enforce penalties against landlords or their agents in all jurisdictions has limited the effectiveness of these as a disincentive against misuse of the provisions. The Victorian requirement that a landlord must provide evidence of a contract of engagement/authority to sell when serving the notice may currently be more effective as a disincentive against its use given the fees involved for the landlord in breaking the contract. In jurisdictions where 'intention to sell' has been introduced as a reason for eviction, advocates suggest stronger enforcement measures are required. This should include allowing renters to seek compensation or alternatively request their reinstatement as tenant where wrongful eviction has occurred.*

We are concerned that these reforms should ensure fairness and security, not take it away.

The property will be renovated or repaired or demolished

While we can see that renovation or a need to demolish a premises for a planned rebuild may be deemed as being valid reasons for a landlord, these reasons need to

be addressed properly in the legislation. We do not, however, think it reasonable that a tenancy be terminated for repairs.

Renovation and Demolition

In regard to termination on grounds of renovation and demolition, a landlord should be required to demonstrate they have obtained all necessary permits and consents to carry out planned renovation of the premises that requires vacant possession or demolition of the premises and reconstruction. In addition, appropriate disincentive measures should be implemented to limit inappropriate or casual use of this reason and minimise the circumstances where termination occurs and the landlord then has a ‘change of mind’. This should include a temporary ban on re-letting of the property for a set period of time (eg. 6 months). In the case of a renovation, the renter must also have been given the option to continue the tenancy agreement with an abated rent during the repair and renovation period and declined.

Repairs

In regard to terminating on grounds of repairs, a landlord can already issue a termination on grounds that a premises has become uninhabitable, other than as a result of a breach (section 109).

If they are enabled to terminate in order to carry out repairs, what is to stop them from allowing the premises to fall into a state of disrepair?

If significant repairs are required as a result of a failure to maintain the premises, an additional provision in the Act could perhaps be included to enable an arrangement for a tenant(s) to move into alternative accommodation, paid for by the landlord while the repairs are carried out.

If termination is allowed for significant repairs, it must also be clarified that this is allowable only where the landlord genuinely intends to carry out significant repair of the residential premises; where the repairs are not required as a result of the landlord’s breach of the agreement; the works will render premises uninhabitable for a minimum period of time (for example, a minimum of 6 weeks or longer); and that the work can only be undertaken if the property is vacant. The renter must also have been given the option to continue the tenancy agreement with an abated rent during the repair period and declined.

Landlord wants to use the property differently (Change of use)

In this case, the landlord should be required to demonstrate the intended change of use, and that the premises will not be used as a residence for at least 6 months.

A temporary ban on re-letting of the property should apply when this reason is used.

Landlord or a member of their immediate family is moving into the property

In these circumstances, where there is a periodic tenancy or a fixed term lease is coming to its end a landlord should be able to serve a termination notice on this basis as long as they can demonstrate a genuine intention to use the property as their principal place of residence, and that they intend to occupy the property for at least 12 months.

A clear definition of family must be provided within the Act. Without clarity on this, there is greater scope for disagreement between parties, and unnecessary applications to the Tribunal to resolve the issue. The NSW Tenants Union has identified that Tasmanian and Victorian tenancy law provide a useful definition of family that NSW could draw on:

Section 42(5) of the Tasmanian Residential Tenancies Act 1997

> A member of the family of an owner means –
>
> (a) the owner's domestic partner, son, daughter or parent; or
> (b) a parent of the owner's domestic partner; or
> (c) another person who normally lives with the owner and is wholly or substantially dependent on the owner.
>
> Section 91ZZA(1)b of the Victorian Residential Tenancies Act 1997
>
> In the case of a residential rental provider who is an individual—
>
> (i) by the residential rental provider's partner, child, parent or partner's parent; or
> (ii) by another person who normally lives with the residential rental provider and is wholly or substantially dependent on the residential rental provider.

As suggested by the NSW Tenants Union, the following new reasons to end a tenancy could be added:

- *The landlord genuinely intends to demolish, and/or reconstruct the property and has obtained all necessary consents and permits to carry out the planned demolition and/or reconstruction of the premises .*

- *The landlord genuinely intends to use the property for another purpose where they can demonstrate the intended change of use and that the premises will not be used as a residence for at least 6 months.*

- *The landlord, or a member of their immediate family, genuinely intends to use the property as their principal place of residence for at least 12 months.*

Q3. What would be an appropriate notice period for the five proposed reasons (and for any other reasons you have suggested)? Why is it reasonable?

We recommend the following notice periods:

- Significant repair or renovation requiring the premises: 6 months
- Change of use: 6 months
- Demolition: 6 months
- Landlord or immediate family moving in: 120 days
- Sale: 120 days

If the government is considering less notice time, we request that the government consider how difficult it is to find and move to a home, especially for a whole family, and that with all no-fault terminations require no-less than a 90-day notice.

Q4. What reasons should require evidence from the landlord? What should the evidence be?

We fully support the recommendations of the NSW Tenants' Union on this issue:

> *Documentary (written) evidence should be provided to the renter with a termination notice for all proposed new reasons. Evidence must be sufficient to demonstrate the validity of the reason for termination.*
>
> *In Victoria the Director of Consumer Affairs determines – approves and publishes – the appropriate documentary evidence that is required to support the reason for giving a notice to vacate for each 'no fault' reason available. In*

the ACT the RTA requires that a notice to vacate is accompanied by written evidence supporting the landlord's reason for the notice. They provide examples of appropriate written evidence that might be provided, including statutory declarations, development applications, and quotes from a tradesperson for renovations.

The current evidentiary requirements in Victoria for the new reasons proposed and being considered in this review provide a useful indication of the level and type of evidence that should be required in NSW.

Change of use

> *A witnessed Statutory Declaration of intention to use the premises for business purposes, including details of the particular business and stating that the premises will not be re-let as a residence before the end of 6 months after the date the notice was given.*
>
> *And one or more of the following:*
>
> - *the ABN of the business; or*
> - *Business registration or licence; or*
> - *Council planning permit.*

Demolition

> *Both of the following:*
>
> - *Building permit for demolition; and*
> - *Contract with a suitably qualified Builder-demolisher, stating the date that demolition will occur.*

Landlord or immediate family moving in

> *A witnessed Statutory Declaration signed by the rental provider, stating either:*
>
> - *they intend to reside in the rented premises, or*
> - *the name of the person who will occupy the rented*

premises, their relationship to the rental provider, and declaring whether the person is a dependent, and

- *that the rental provider understands that they must not re-let the premises to any person (other than the person named to be moving in to the rented premises in the statutory declaration) for use primarily as a residence before the end of 6 months after the date on which notice was given, unless approved by VCAT*

Sale

Contract of sale, signed by the vendor and purchaser and dated

---

A landlord must be required to provide documentary evidence supporting the landlord's reason for the notice when they serve the notice to vacate. A notice to vacate served without the appropriate documentation should not be considered valid.

The current Victorian evidentiary requirements for termination on the basis of Change of Use; Demolition; Landlord or immediate family moving in; Sale and other 'no fault' reasons provide an appropriate model that NSW might draw - and improve - on.

Q5. Should any reasons have a temporary ban on renting again after using them? If so, which ones and how long should the ban be?

We believe that all reasons proposed should have a temporary ban on renting again after they are used.

We are in full agreement with the NSW Tenants' Unions position on this:

Appropriate compliance protections are required to ensure landlords do not misuse newly introduced 'reasonable grounds' for eviction.

A renter being evicted from their home can be an extremely stressful and expensive experience, especially in the midst of a rental crisis. It is important that if a renter is going to be put through that experience, there is evidence that the eviction is necessary and genuine, and proper safeguards are in place from wrongful evictions.

This should include stopping the landlord from renting out the property for a set period of time when certain termination grounds are used.

There should be a ban on the property being rented out again when a renter is evicted for any of the reasonable grounds for eviction discussed above. This will help safeguard against landlords wrongfully issuing terminations for one of these grounds when their real intention is to have the property vacant to rent out again.

Our recommendation

The following reasons should have a temporary ban on re-letting applied as indicated:

- *Change of use: 12 months*
- *Demolition and/or reconstruction: 6 months*
- *Landlord or immediate family moving in: 12 months*

Additional Issues

There are additional prospective issues with the new reasons for termination that need to be addressed:

ADDITIONAL ISSUE: More compliance & enforcement (penalties for wrongly issuing terminations)

We fully support the NSW Tenants' Unions position on this:

If the landlord has been intentionally misleading or willfully misused a termination reason, the landlord should face a significant penalty (a fine) and be required to compensate the renter for any reasonable moving costs.

Alternatively, if the landlord's circumstances have simply changed since the tenancy ended, the landlord should pay any moving costs associated for the evicted renting household.

ADDITIONAL ISSUE: Retaliatory evictions

As stated above, BMTAAS sees, on a daily basis, the impact of retaliatory evictions and the prospect of retaliatory evictions on our clients' capacity to address issues with their tenancies. We also see the weakness of the retaliatory provision of the Act (section 115).

We agree with the NSW Tenants' Union that '*consideration of reforms to retaliatory evictions should also be considered as part of this reform because of the potential for misuse of grounds (both established grounds within the Act, as well as any newly introduced reasons).'*

And we agree with the NSW Tenants' Union recommendations:

- *The factors the Tribunal can consider when determining retaliatory action should be broadened.*

- *The legislation should remove the Tribunal's discretion where retaliatory action is found*
- *The onus of proof should shift from the tenant*
- *A preclusion period for another notice should be introduced*

To provide an example of the discretionary issue, BMTAAS was recently assisting a client at the Tribunal at Katoomba Court. During questioning, the landlord's representative agent admitted that after receiving our client's complaint about the landlord accessing the premises without notice multiple times, he spoke to the landlord on the phone about it and by the end of the conversation, the landlord had instructed him to issue a no grounds termination notice. The Member concluded that this was a retaliatory eviction (and technically, he could have concluded that the tenant hadn't met with the requirement of 'taking action to enforce a right' – as stated above, there is a need to broaden the factors the Tribunal can consider when determining retaliatory action). The provision gives the Tribunal discretion, however. The Tribunal 'may' not 'must' refuse to terminate if the notice is deemed retaliatory. The Member concluded that the relationship had deteriorated, that the parties needed to go their separate ways and that the tenancy should therefore be terminated. We argued that the quality of the relationship was not something that needed to be considered, the contract was not a marriage and that with an agent involved, the parties never had to see each other. The Member, however, still decided to terminate the tenancy.

ADDITIONAL ISSUE: General compensation for renters evicted who are not at fault

As is provided in other international jurisdictions, we agree with the NSW Tenants Union recommendation on compensation being awarded to renters evicted who are not at fault:

> *Consideration should be given to making a landlord liable to compensate a renter for any moving costs incurred where they terminate a tenancy for a reason other than the renters' breach. Compensation could come in the form of a lump sum payment, or of an equivalent rent-free period. Where a landlord is experiencing hardship that renders them unable to meet their obligation to compensate the tenant, there could be a separate form of assistance (hardship fund) available to the landlord to enable them to meet that obligation to the renter.*

ADDITIONAL ISSUE: Termination of long term tenancies

We fully concur with the NSW Tenants Union recommendation on the issue of addressing the current capacity for a landlord to end a long-term tenancy under section 94 of the Act and believe that subsection 94(2) should be altered to…

> *Require the landlord to provide a valid termination notice to the renter when terminating a long term tenancy*

ADDITIONAL ISSUE: Tribunal Discretion

We again concur with the recommendation of the NSW Tenants Union on this issue.

The new reasons for termination should give discretion to the Tribunal (as the current law does for terminations on grounds of breach under section 87 of the Act)…

> *… to decline termination if it considers it would not be appropriate having regard to all relevant factors and the circumstances of the case.*

KEEPING PETS IN RENTAL HOMES

BMTAAS strongly believes that tenants should not be denied housing or discriminated against because they have a pet. For many of our more disadvantaged clients, their pets are like their family. Landlords should only be able to refuse a pet by obtaining a Tribunal order allowing them to do so AND the Act should prohibit landlords and agents from asking about pet ownership at the application stage.

Q6. Is 21 days the right amount of time for a landlord to consider a request to keep a pet? If not, should the landlord have more or less time?

We think that 14 day is a reasonable amount of time.

Q7. What are valid reasons why a landlord should be able to refuse a pet without going to the Tribunal? Why?

We support the NSW Tenants Union's position on this:

> *Landlords must be required to seek an order at the Tribunal if they wish to refuse a request for a pet.*
>
> *The Tribunal should consider the welfare of the animal as the primary consideration when determining whether it is reasonable to refuse a request for a pet at the property. They should be guided to determine this with reference to relevant animal welfare guidelines and/or other companion animals regulation.*

Q8. Should the Tribunal be able to allow a landlord to refuse the keeping of animals at a specific rental property on an ongoing basis? Please explain.

Q9. What other conditions could a landlord reasonably set for keeping a pet in the property? What conditions should not be allowed?

We again support the NSW Tenants Union position on this issue:

Each pet request should be assessed on its own merits, and with reference to the particular circumstances of the specific companion animal and the property at the point in time that the request is made.

The landlord should not be allowed to put special conditions on the keeping of a pet in the property, including conditions such as not allowing a pet inside or providing specific compensation for any pet damage or changes to the property. If any damage does occur inside a property, renters already pay bonds to cover potential damage to the property, whether this damage is from a pet or human. There is also recourse for landlords to recoup any potential costs above the bond amount. Renters are already required to make a request about any changes they wish to make to the property and must pay for these (including, for example, installing a dog door).

Other legislation such as the Companion Animals Act 1998 already provides rules based on welfare concerns for keeping pets. Local government ordinances and rules that may set certain conditions on pet owners already apply to renters once they move into the area, and these do not need to be specified again in a tenancy agreement. While conditions or restrictions reflecting other laws may not seem unreasonable, it is unnecessary to duplicate the regulation within tenancy law or the contract (agreement) as these already apply.

Renters should not be subject to additional rules that others in the community are not required to follow.

ADDITIONAL ISSUE: Addressing discrimination at the application stage

While the proposed changes make it easier for tenants to request to keep pets at their premises, it is more common for tenants who have established a strong bond with their animal to experience incredible difficulty in finding a new premises that allows them to keep their pet.

And, we think it important that the NSW Government know that we have regularly seen people chose homelessness over giving up their pet.

For many of BMTAAS's more disadvantaged clients, their dog or cat is all they've got. They don't have other members of the community or family. We have heard clients say things like, 'If it wasn't for my dog, I wouldn't be alive'. Pets are forgiving. While someone with a traumatic and troubled past might not get on well with people, their pet doesn't see this and gives them a connection they don't get from the rest of society. Their pet gives them a focus outside of themselves; a reason to keep going and keep living.

Dogs are also protection. We have known clients who have experienced DV who refuse to live without their dog because of the protection he or she provides. This problem is

heightened by the fact that there are currently extremely limited options for emergency or temporary accommodation that allow for pets.

ADDITIONAL ISSUE: Pet Bonds

We agree with the NSW Tenants Union on this issue:

> *Rental pet bonds should not be considered as an additional condition for keeping a pet. As we have mentioned earlier renters already pay bonds to cover potential damage to the property and landlords can recoup any potential costs above the bond amount. There is no reason why landlords should be able to request an extra bond from renters with pets. It is currently prohibited in NSW for landlords and real estate agents to request pet bonds. This should remain the case. Pet bonds are unnecessary and may result in inequity.*
>
> *Our recommendation*
>
> *Continue to prohibit landlords and real estate agents from requesting pet bonds.*

RENTERS' PERSON INFORMATION

Regulation of collection of information during the application process

Q10. Do you support limiting the information that applicants can be asked for in a tenancy application? Why/why not?

Yes, BMTAAS has regularly been notified of tenants being asked for information that is likely to lead to highly discriminatory decisions and that is further contributing to our clients reluctance to assert their rights.

For example, tenants regularly report of being asked to state if they have been to the Tribunal and make a point of identifying that such forms give no opportunity to provide an explanation as to why. Permitting such questions in the application process is not only leading to discriminatory decision making but our clients are expressing a disinclination to dispute a landlord's claims or assert their rights due to the fear that this will be used against them in future applications.

The information that can be asked for needs to be limited, as presented in the consulation paper.

Q11. Do you have any concerns with landlords or agents only being able to collect the information set out in the table above to assess a tenancy application? Please explain.

The information set out in the table appears to be suitable and all that is required, except for the following suitability question: 'Was bond refunded in full at the previous address? If not, explain why.'

Due to the prevalence of online or paper forms asking if the tenants' bond has ever been claimed, we regularly have tenants say that they do not want to dispute claims on their bond even if they think they are unfair. Tenants then prefer to pay money directly to landlords at the end of the tenancy rather than have this claimed from the bond.

Including the requirement that they be asked to explain why is not going to take away this fear.

Q12. Do you support the use of a standard tenancy application form that limits the information that can be collected?

Yes, this seems to be the best way to address this issue.

Q13. Do you think that limiting the information that may be collected from rental applicants will help reduce discrimination in the application process?

Absolutely.

To further illustrate why we think this is so important, we again draw attention to the following information provided by the NSW Tenants' Union:

> *There has been ongoing creep in terms of the information requested at application, driven by the competitive nature of the application process and the failure to regulate it until now. We surveyed renters earlier this year [2023] about the kinds of information they had been asked to share when applying for a rental property. We found:*
>
> > *- 10.4% of respondents had been asked to provide details of their social media profiles (handles, accounts)*
> >
> > *- 9.7% provided or were asked for evidence of household insurance*
> >
> > *- Almost half (48%) have been asked to undertake a tenancy database check, and 39.5% have been asked whether they have gone to Tribunal. Some renters noted they had been asked to pay a fee (e.g. $25 for a "professional reference check" to run a check)*
> >
> > *- 7.3% of respondents told us they had been asked for or had provided medical records when applying for a rental property.*

USE AND DISCLOSURE OF RENTERS' PERSONAL INFORMATION

Q14. Do you support new laws that set out how landlords and agents can use and disclose renters' personal information? Why/why not?

Q15. What should applicants be told about how their information will be used before they submit a tenancy application? Why?

Q16. Do you support new laws to require anyone holding renter personal information to secure it? Why/Why not?

Q17. How long should landlords, agents or proptechs be able to keep renter personal information? Please explain.

Q18. Do you support requiring landlords, agents or proptechs to:

(a) give rental applicants' access their personal information,

(b) correct rental applicants' personal information?

Please explain your concerns (if any).

In regard to these questions, we fully support the NSW Tenants' Union recommendations:

> *Renters should have confidence that any information collected about them is held only for the period it is beneficial to the renter to do so. This means*
>
> *- For landlords and agents*
>
> ○ *For a successful applicant*
>
> *Contact information such as phone and email address needed for the ongoing relationship should be stored securely. The tenant should be provided with copies of any information held about them and then all non-contact information destroyed within 2 months of entering into the agreement.*
>
> ○ *For unsuccessful applicants*
>
> *Information and documentation should be destroyed once an agreement has been entered into, unless the unsuccessful applicant gives explicit and withdrawable consent for the retention of information in response to a plain language explanation of its use for a specific time frame of no more than 6 months or as directed by the person. At the end of that time frame, information must be destroyed or consent renewed.*
>
> *- For third parties*
>
> *Information should be destroyed upon completion of the application unless the person gives explicit and withdrawable consent for the retention of information in response to a plain language explanation of its use for a specific time frame of no more than 6 months or as directed by the person. At the end of that time frame, the information must be destroyed or consent renewed.*
>
> *- For all*

Renters should be given access to personal information (including specifying this be free, reasonably accessible, and clear timeframes for response)

Q19. Are you aware of automated decision making having unfair outcomes for rental applicants? Please explain.

Q20. What should we consider as we explore options to address the use of automated decision making to assess rental applications?

We are in agreement with the NSW Tenants Union response to these questions:

While new technology can help streamline the application process for both renters and landlords or their agents, certain protections must be in place to ensure equity and transparency as their use becomes more widespread.

- Renters must be provided with the option to apply with a paper form and paper applications must be accepted and considered equally alongside online applications.

- Any information that can be used to unlawfully discriminate against a renter (renter's age or suburb) should not be allowed to be used by computer programs for decision making.

- Full transparency regarding how a computer program will make recommendations or decisions about renters' applications should be required. Information about this should be made publicly available by those relying on the program.

- Before the automation is used above an identified threshold to allow for limited, small-scale pilots, the automation should be tested by an authority resourced to do so testing both the technology itself and the appropriateness of the technology.

Our recommendation

Work to create a pathway for automated decision-making that can test technology before widespread adoption.

Disallow further use of automated decision-making including elements such as 'scores' that may influence decision-making until appropriate structures are put in place.

PORTABLE BOND SCHEME

Q21. How long should a renter have to top up the new bond if some or part of the bond has been claimed by the previous landlord?

BMTAAS is of the opinion that renters should be provided with 30 days to top up the new bond.

Q22. What should happen if the renter does not top up the second bond on time? Please explain why.

BMTAAS does not think that the renter should not be barred from the portable bond scheme in future or that the landlords should not be able to end the lease. We believe that appropriate hardship support should be made available for those renters struggling to pay the difference because they are experiencing financial hardship.

As stated by the NSW Tenants' Union:

> *Moving house can be very expensive for renters, an average of $4,000 per renting household. The proposed portable bond scheme is intended to reduce the financial disruption that moving often causes. Renters struggling to pay the difference in bond amounts should be supported to make the payment while they recover from the financial difficulties associated with moving house.*

Q23. Should this scheme be available to all renters, or should it only be available to some? Please explain why.

Q24. Who should have a choice on whether to use the scheme?

Q25. What other (if any) things should we consider as we design and implement the portable bond scheme? Please explain.

BMTAAS is in agreement with the NSW Tenants Union in position on these questions:

> *This scheme should be available to all renters, and should be optional for renters to use. Universality is significantly less complex to administer, reducing the costs to the government. It also reduces the already very low risk of default.*
>
> *Landlords should be informed only that a bond is in place. Their interests are secured within the system and it is already acknowledged that government support is used to discriminate against applicants.*
>
> *We understand the cost of implementation may be significant due to required rebuilding of Rental Bond Board systems. This represents an opportunity to better deal with bonds between co-tenants and subtenants, especially in relation to people in instances of family and domestic violence whose bond can currently be used as a tool of further violence.*

EXCESSIVE RENT INCREASES

Q26. Do you have any concerns about the NSW Government collecting information on rent increases and making it publicly available for renters? If yes, please provide details.

No.

Q27. What do you think is the best way to collect this information?

BMTAAS is in agreement with the NSW Tenants Union position on this question:

> *To ensure the data is reliable and timely, landlords or their agents should be required to report a rent* increase *to the NSW Government using an online system (such as Rental Bonds Online).*

RENTAL AFFORDABILITY

Q28. Do you think the 'one increase per 12 months' limit should carry over if the renter is swapped to a different type of tenancy agreement (periodic or fixed term)? Please explain.

Q29. Do you think fixed term agreements under two years should be limited to one increase within a 12-month period? Why or why not?

We are in agreement with the NSW Tenants' Union's response to these questions:

> *Rents have been increasing sharply for many renters in NSW. The limited protections currently available are not adequate for renters who face an excessive increase during a tenancy. At present the Residential Tenancies Act 2010 places a limit of one rent increase in 12 months for renters on a periodic lease. This is an appropriate, though limited, protection.*
>
> *Unfortunately, we are aware some landlords are swapping renters between lease types in order to bypass the existing rent increase protections and increase rents more than once in a 12-month period. To close this loophole, there should be protections to prevent a landlord from increasing the rent when changing between lease types.*
>
> *For fixed term agreements under two years placing a limit on the number of times an increase can occur within a 12-month period is not as necessary. Within fixed term agreements, a renter must be informed of and agree to an increase being written into the agreement before they sign the lease. A reasonable limit on the quantum, rather than the frequency, is needed. Some renters signing on to a fixed term tenancy may prefer to negotiate more increases, but for smaller amounts each time to stage the increases in line with their expectations regarding wage increases or similar, and/or smooth the impact of an increase.*
>
> *A limit of one increase within a 12-month period for a fixed term agreement under two years could have more impact, if introduced alongside a fair limit or formulation regarding quantum of the increase (see below for further discussion).*
>
> *Our recommendation*

There must be protections introduced to prevent a landlord from increasing the rent when changing between lease types.

Landlord to prove rent is not excessive

Q30. What do you think about the [below] options? Please provide detail.

- ***Require a landlord to prove that a rent increase is not 'excessive' where, for example, a rent increase exceeds CPI over a certain period.***
- ***Amend the criteria in the Act for when a rent increase is 'excessive'. Currently, the list of factors that may be taken into account in considering if an increase is 'excessive' includes the market level of rent for comparable properties and the state of repair of the property.***

The market sets a self-referential value on rents, it pushes rents as far as it is able whatever market conditions prevail – even if those market conditions are causing serious harm.

The clients of BMTAAS have been struggling to survive during the current rental housing crisis.

We wholeheartedly agree with the first option as a means of reigning in the rental market and concur with the NSW Tenants' Unions position on this:

In the ACT, a landlord is required to prove that a rent increase is not 'excessive' where a rent increase exceeds 110% of the change in CPI since the last rent increase or since the tenancy agreement began. Unless the renter consents to the increase a landlord must apply to the Tribunal for the increase, and provide evidence for why an increase above the threshold is justified. If the increase is below that threshold (110% of change in CPI) the increase is considered reasonable. In this case, the renter who wants to challenge an increase must apply to the Tribunal and provide evidence as to why they feel it is excessive in the circumstances.

If a model of this kind was introduced in NSW, the landlord would still be able to increase rents above any threshold set (whether that be according to CPI, or some other measure determined appropriate). However, the responsibility to justify and provide evidence for the increase would be more fairly allocated to the landlord or their agent. A renter should not have to prove an increase is excessive in these circumstances.

Our recommendation

Landlords should be required to justify a rent increase if it is over a reasonable threshold (set by a measure appropriately determined by the Rental Commissioner or another relevant independent agency). The responsibility to prove a rent increase is not excessive should sit with the landlord.

We urge the NSW Government to give serious consideration to this option.

In regard to the second option, we again concur with the recommendation of the NSW Tenants' Union:

> *To ensure fairer rents and access to housing market rents should not be the primary consideration when determining whether a rent increase is excessive.*
>
> *While the list of concerns allows the Tribunal to consider 'any other matter it considers relevant', the Act explicitly restricts consideration of the renter's ability to pay an increase and by inference the lack of any alternative affordable accommodation. The lack of any direct reference to motivating factors means landlords are also not minded to consider their reasons for increasing the rent before issuing a notice to their tenant.*
>
> *Our recommendation*
>
> *The Tribunal should be able to consider the question of affordability, and other questions relating to the landlord's motives for increasing the rent if warranted, when considering whether a rent increase is excessive.*

RENTING AND EMBEDDED NETWORKS

Q31. Do you support new laws to require landlords or their agents to tell rental applicants if a rental property uses any embedded network? Why/why not?

Q32. When should a rental applicant be told that a property uses an embedded network?

Q33. What information should a renter be told about a rental property using an embedded network? Please explain.

We are again in support of the NSW Tenants' Union' position on this issue:

> *Landlords or their agents should be required to disclose where any services are provided via embedded networks when listing (advertising) the property for rent, at inspections for the property, as well as in the tenancy agreement.*

FREE WAYS TO PAY RENT

Q34. What would be the best way to ensure that the free way for renters to pay rent is convenient or easy to use? Please explain.

Q35. Should the law require a landlord or agent to offer an electronic way to pay rent that is free to use? Why/why not?

We believe that the law should require a landlord or real estate agent to also offer an electronic way to pay rent that is free to use, such as a direct bank transfer option.

Q36. What are the issues faced by renters when moving into a strata scheme? Would better disclosure about the strata rules for moving in help with this?

We are again in agreement with the position of the NSW Tenants' Union on this issue:

> *Much of strata scheme management is focused on creating harmonious relationships between people sharing a building. Renters can find themselves excluded from this process by not being treated as a part of the community.*
>
> *Strata renters face many of the same issues as other renters, but with the added complexity of an additional level of ownership structure. This comes out in three key forms.*
>
> *Resolution of repairs and maintenance issues in strata building suffers from lack of clarity around who bears responsibility for the maintenance.*
>
> *Tenants moving into the property report not being given a copy of the by-laws or the required notification of a new tenant being given to the strata secretary. This may lead to an issue that they are also not routinely informed of meetings to which they are entitled to attend (though without ability to speak), such as the Annual General Meeting.*
>
> *Unlike owner occupiers, renters can be evicted for breach of the by-laws. The current setting means a renter can be much more harshly punished for the same behaviour than an owner-occupier. Also, unlike owner-occupiers, renters are generally unable to participate in the management structures that both set by-laws and decide the strategy for enforcement.*
>
> *Particularly where a dispute arises between neighbours, renters are at a disadvantage in resolving the dispute.*
>
> *Our recommendation*
>
> - *Owners should be directly responsible for repairs and maintenance issues and then empowered to pass on costs to strata.*
> - *By laws should be provided with the tenancy agreement with penalties for failure to provide. They should also be published and available through the Strata Hub.*
> - *A breach of by-laws should not constitute a breach of the tenancy agreement.*