Caravan & Camping INDUSTRY ASSOCIATION NSW

Manufactured Housing INDUSTRY ASSOCIATION NSW

Land Lease Living INDUSTRY ASSOCIATION NSW

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Residential Tenancies
Policy & Strategy, NSW Fair Trading,
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Dear Policy & Strategy team

CCIA NSW SUBMISSION ON CONSULTATION PAPER – IMPROVING NSW RENTAL LAWS, JULY 2023

The Caravan, Camping & Touring Industry & Manufactured Housing Industry Association of NSW Ltd (CCIA NSW) is the State's peak industry body representing the interests of over 500 holiday parks and residential land lease communities (residential parks, including caravan parks and manufactured home estates) and over 200 manufacturers, retailers and repairers of recreational vehicles (RVs, including caravans, campervans, motorhomes, camper trailers, tent trailers, fifth wheelers and slide-ons), camping equipment suppliers, manufactured home builders and service providers to these businesses.

There are several residential land lease communities in NSW where **operators rent a moveable dwelling and a site to tenants under residential tenancy agreements**. These agreements come under the *Residential Tenancies Act 2010* (RT Act) and tenants (or 'renters') have different rights and obligations to home owners who rent only a site.

Tenants are, however, residents in residential land lease communities and are also subject to the *Residential (Land Lease) Communities Act 2013* (RLLC Act) in relation to compliance with community rules and residents' committees.

We welcome the opportunity to provide feedback on the *Consultation Paper – Improving NSW Rental Laws, July 2023* (Consultation Paper).

REMOVING 'NO GROUNDS' TERMINATIONS

We note page 4 of the Consultation Paper states that the NSW Government has committed to ending 'no grounds' terminations, indicating this policy decision has already been made. Without further consultation this is disappointing and will be to the detriment of current and future tenants and landlords.

The arguments in favour of removing 'no grounds' termination include giving tenants more security when renting a home and addressing the 'problems' of no grounds termination notices used during a periodic tenancy, such as discrimination or retaliation against a tenant seeking

to exercise their rights (e.g., requesting repairs). This approach, however, is misdirected because removing ‘no grounds’ terminations is likely to negatively impact the rental market.

This is because the change will result in landlords having less flexibility and certainty regarding their investment properties, which will likely discourage investment in this area and thereby reduce rental supply – right at a time when NSW is dealing with a housing availability and affordability crisis.

For example, a landlord may want to have a long-term lease or multiple year leases in place, but if a tenant refuses to enter a further fixed term lease and moves to a periodic lease, the proposed change means the landlord will lose their ability to terminate the lease on no grounds until a prescribed ground arises in the future. On the other hand, the tenant will enjoy significantly more flexibility with the ability to terminate the lease with very little notice (currently 21 days notice under section 97 of the RT Act) while the landlord misses out on executing their preferred investment strategy for their own property.

There will also be cases where a landlord has a legitimate ground for terminating a lease, but the RT Act may not accommodate it and this could leave the landlord in a difficult position.

Privacy could be a concern if a landlord has a legitimate ground to terminate a lease, but they want to end the lease on ‘no grounds’ because they do not wish to disclose personal matters to the tenant. Landlords should not be forced to disclose information about their personal affairs where they do not feel comfortable doing so.

There is also the perverse outcome that removing ‘no grounds’ terminations will force landlords to use other grounds to terminate leases, which may leave tenants with a shorter notice period to find alternative housing than the current 90 days notice for ‘no grounds’ terminations.

If the reform objective is to increase housing security for tenants, then the NSW Government should not be unfairly targeting landlords. Rather, the focus should be on increasing the rental housing stock in NSW by removing the barriers to more housing supply, and adopting policies that drive investment into the market. This includes addressing land availability, planning restrictions and the lengthy, overly complex approvals processes.

We can attest to these issues creating challenges, given the primary constraint on the supply of more residential land lease community developments in NSW right now is the difficulty in getting land use approvals. We are also raising these issues with the Department of Planning and Environment and advisors to the Hon. Paul Scully, Minister for Planning and Public Spaces and the Hon. Ron Hoenig, Minister for Local Government.

There is a real impetus to consider these reforms about ‘no grounds’ terminations by researching and implementing real ‘build to rent’ solutions for the rental market. In this way providers can commit to long-term rentals before they enter the market. The difficulty of removing ‘no grounds’ terminations is that it will impact on the whole of the rental market.

For the purpose of this consultation, landlords need to be encouraged and incentivised to enter and keep their homes in the long-term rental market, otherwise they will look to place their investment dollars elsewhere.

We therefore oppose the removal of ‘no grounds’ terminations because it is not the appropriate policy response to the rental crisis. Adopting policies that generate more rental properties to create a ‘renters' market’ is what will put tenants in a better position over the long term.

In the short term, a fairer approach for all parties would be to retain 'no grounds' terminations and consider increasing the notice period in section 85 (2) of the RT Act.

The Government could also consider improvements to provisions in the RT Act to strengthen protections for tenants against things like discrimination or retaliatory conduct[1] if they are not currently working as intended.

Ending a Fixed Term Lease

Consultation Question

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

Notwithstanding our position on 'no grounds' terminations, landlords and tenants should not need to have a reason to end a fixed term lease. The agreement of a landlord and tenant that a lease will be for a fixed term and it will end after the agreed term is finished should be sufficient. This should apply regardless of whether the tenancy arrangement is an initial fixed term or additional fixed terms.

We therefore support the Queensland model, as it is the fairest approach and preserves flexibility and autonomy for both parties.

New Reasons for Ending a Lease

Consultation Questions

2. Are there any other specific situations where a landlord should be able to end a lease?
3. What would be an appropriate notice period for the five proposed reasons (and for any other reasons you have suggested)? Why is it reasonable?

New reasons that should be added to the RT Act so landlords can properly terminate a lease when they need to include:

Reason	**Suggested Notice Period**
As note above - the fixed term tenancy is reaching the end of its agreed term.	30 Days – consistent with current notice period in the RT Act – section 84 (end of fixed term tenancy.
The proposed new reasons set out on page 5 of the Consultation Paper, being: *The property:* *• is being prepared for sale* *• will go through reconstruction, repair or renovation that requires it to be vacant*	30 Days – consistent with current notice periods in the RT Act – section 84 (end of fixed term tenancy) and section 86 (sale of premises).

[1] *Section 115 of the Act already protects tenants from retaliatory evictions.*

• *will change its use (e.g. change from a home to a shop or office)* • *will be demolished* *The landlord:* • *will move into the property, or a member of their immediate family will move in* However, in relation to 'reconstruction, repair or renovation that requires it to be vacant' it should be made clear that this also includes extensions. In relation to change of use, it should be made clear that this also includes conversion to a short-term rental or holiday home. An all-encompassing term such as 'non-residential purpose' should suffice. In addition, the reason of 'moving in' should not be restricted to the landlord and their 'immediate' family, but rather any family member. The term 'immediate' could cause confusion and may restrict a landlord from rightfully assisting a person in their family who needs somewhere to live.	
The property is to be acquired for a public purpose.	30 Days – consistent with current notice periods in the RT Act – section 84 (end of fixed term tenancy) and section 86 (sale of premises).
The tenant threatens, harasses or intimidates the landlord, the landlord's agent, an employee or contractor of the landlord or the landlord's agent, or a person in a neighbouring property or common area. Currently, under section 90 of the RT Act the NCAT may, on application by a landlord, make a termination order if it is satisfied that the tenant, or any person who although not a tenant is occupying or jointly occupying the residential premises, has intentionally or recklessly caused or permitted— (a) serious damage to the residential premises or any neighbouring property (including any property available for use by the tenant in common with others), or (b) injury to the landlord, the landlord's agent, an employee or contractor of the landlord or the landlord's agent, or an occupier or person on neighbouring property or premises used in common with the tenant. This ground requires damage or injury to have occurred and fails to deal with behaviour that justifies termination of a lease. Given residential land lease communities are a form of	14 days – consistent with current notice period in the RT Act – section 87 (breach of agreement).

communal living, for the safety and security of everyone, operators should have the ability to address instances of tenants from threatening, harassing or intimidating other residents.	

Evidence and Other Restrictions

Consultation Questions

4. What reasons should require evidence from the landlord? What should the evidence be?
5. Should any reasons have a temporary ban on renting again after using them? If so, which ones and how long should the ban be?

When ending a lease due to family or domestic violence, tenants are required to provide supporting evidence when giving the landlord or agent a domestic violence termination notice. This can be a:

- certificate of conviction for the domestic violence offence
- family law injunction
- provisional, interim or final domestic violence order, or
- declaration made by a 'competent person' (i.e., registered health practitioners, social workers and counsellors).

We have no issues with requiring landlords to provide evidence to tenants when ending a tenancy for certain reasons, so long as what is required is reasonable and readily available.

Our suggestions of the reasons that could require evidence and the kind of evidence that should suffice are:

Reason	Supporting evidence
Property will go through reconstruction, extension, repair or renovation that requires it to be vacant.	Copy of or a link to a development approval if required or tradesperson's quote that has been accepted by the landlord. Requiring landlords to provide a copy of a contract with a tradesperson gives rise to privacy issues and could be problematic in times where tradespersons are delaying entering into contracts until they are ready to build due to council delays. This is something we have been seeing in the market recently, as builders try to manage volatile material costs.
Property is being prepared for sale.	Signed declaration or letter/email from agent or landlord (if selling without an agent).
Change of use to a non-residential purpose (e.g., a shop, office, short-term rental/holiday home, etc)	Copy of or a link to a development approval if required or signed declaration or letter/email from landlord.

The landlord or a member of their family will move into the property	Signed declaration or letter/email from the landlord or family member.

Other reasons such as sale of the property, compulsory acquisition, demolition, etc, will be self-evident.

We do not support any reasons having a temporary ban on renting again after a landlord uses them.

We note in Queensland the *Residential Tenancies and Rooming Accommodation Act 2008* (Qld RTRA Act) now contains offences at sections 365B, 365C and 365D where the landlord or property manager causes the property to be re-let within 6 months of ending a tenancy on grounds of sale, change of use, or owner occupation, but this is problematic and, in our view, will likely lead to unnecessary disputes.

It is difficult to prescribe an appropriate period of time, and given a landlord's circumstances can change at any moment they should not be unfairly restricted in relation to their own property.

For example, on the grounds of moving into the property, the landlord may have had every intention of doing this when terminating the lease, but something happens in the interim (an injury to themselves or needing to unexpectedly care for someone else, job loss, etc) and they can no longer undertake the move.

For change of use, the landlord may be about to start works to effect the change and problems arise with the builder or tradesperson that cause financial impacts. The landlord should be able to re-let the property if they need to because of a change of circumstances.

NEW MODEL FOR KEEPING PETS

Consultation Questions

6. 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?
7. What are valid reasons why a landlord should be able to refuse a pet without going to the Tribunal. Why?

In answer to Consultation Question 6, 21 days is a reasonable amount of time for a landlord to consider a request to keep a pet.

However, we reiterate our previous submission on the Consultation Paper *Keeping Pets in Residential Tenancies – Consultation – October 2022* (Pet Consultation Paper). Given the nature of residential land lease communities in NSW we do not support changing NSW residential tenancy laws on keeping pets. If the laws are changed, residential land lease communities should be excluded.

Many residential land lease communities in NSW are pet friendly and operators recognise and encourage the health and social benefits of pet ownership. However, it remains that the operator and tenant are best placed to negotiate whether keeping a particular pet should be allowed for a given premises, as rental premises vary, and certain types of pets may not be suitable for all types of premises.

For example, in a residential land lease community there can be a mixture of manufactured homes,[2] relocatable homes[3] and moveable dwellings.[4] There is usually no fencing between sites and neighbours can be in closer proximity to each other than free standing houses in suburban streets.

In addition, many residential land lease communities are 'mixed parks' i.e., a combination of holiday guests, long-term casual occupants and permanent residents. These properties cater to a wide demographic from small children to older people. There can be interaction between guests and residents and shared use of communal facilities. Not everyone is a 'pet person' and comfortable with animals being around, so operators need to be responsive to what is most appropriate for their community.

Further, some residential land lease communities are located near environmentally sensitive areas (e.g., coastal areas, national parks) and there may be a need to control the presence of cats, which can harm native animals when they wander at night.

For these reasons, whether a tenant can keep a pet (that is not an assistance animal) in a rental premises within a residential land lease community (i.e., a dwelling and a site) should remain a matter for negotiation between the operator and tenant and having regard to the community rules.

In relation to Consultation Question 7, we also advocated in our previous submission on the Pet Consultation Paper that NSW should not adopt a model that does not allow for proper negotiation between the parties and the landlord's only option to refused consent to keeping a pet is to seek an order from the NCAT.

This would impose an unfair procedural and monetary cost on operators. The current corporate application fee for residential proceedings in the NCAT is $108. If an operator receives multiple requests to keep a pet, this could add up to a significant amount of money that they would need to expend to manage the issue.

Should the Department proceed with making changes to residential tenancy laws about pets in rental properties a model where the landlord can refuse permission to keep a pet on specified grounds, and the tenant can go to the NCAT to challenge a refusal based on those grounds (similar to the Queensland model), would be the fairer approach.

This would give the landlord an opportunity to have a say in the first instance and negotiate with the tenant before needing to expend time and resource costs in the NCAT.

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[2] Under the Local Government Act 1993 ***manufactured home*** *means a self-contained dwelling (that is, a dwelling that includes at least one kitchen, bathroom, bedroom and living area and that also includes toilet and laundry facilities), being a dwelling—*
(a) that comprises one or more major sections, and
(b) that is not a motor vehicle, trailer or other registrable vehicle within the meaning of the Road Transport Act 2013,
and includes any associated structures that form part of the dwelling.
[3] Under the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2021 ***relocatable home*** *means a manufactured home or other moveable dwelling, other than a tent, caravan, campervan or vehicle capable of being registered—*
(a) whether or not self-contained, and
(b) that consists of at least 1 major section, including an associated structure forming part of the dwelling.
[4] Under the Local Government Act 1993 ***moveable dwelling*** *means—*
(a) any tent, or any caravan or other van or other portable device (whether on wheels or not), used for human habitation, or
(b) a manufactured home, or
(c) any conveyance, structure or thing of a class or description prescribed by the regulations for the purposes of this definition.

Landlords should therefore be able to refuse a pet without going to the Tribunal for the reasons set out on page 8 of the Consultation Paper, as well as those set out in section 184E of the Qld RTRA Act, being:

- it is a restricted dog, or a dog declared to be dangerous or menacing,
- keeping the animal breaks other laws, such as the *Prevention of Cruelty to Animals Act 1979*, council zoning laws or council ordinances,
- the landlord has previously received an exclusion from the NCAT for the property, type of animal, or number of animals,
- keeping the pet would exceed a reasonable number of animals being kept at the premises,
- the premises are unsuitable for keeping the pet because of a lack of appropriate fencing, open space or another thing necessary to humanely accommodate the pet,
- keeping the pet is likely to cause damage to the premises or inclusions that could not practicably be repaired for a cost that is less than the amount of the rental bond for the premises,
- keeping the pet would pose an unacceptable risk to the health and safety of a person, including, for example, because the pet is venomous,
- keeping the pet would contravene a law,
- keeping the pet would contravene a body corporate by-law or park rule applying to the premises,
- the tenant has not agreed to the reasonable conditions proposed by the lessor for approval to keep the pet,
- the animal stated in the request is not a pet,
- if the premises is a moveable dwelling premises—keeping the pet would contravene a condition of a licence applying to the premises,
- another ground prescribed by regulation.

Consultation Questions

8. 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.
9. What other conditions could a landlord reasonably set for keeping pets in the property? What conditions should not be allowed?

Yes, the NCAT should be able to allow a landlord to refuse the keeping of animals at a specific rental property on an ongoing basis to limit time and costs associated with multiple requests or tribunal applications. Reasons for initial refusal that go to the suitability of the property for pets, or a by-law or park rule, are unlikely to change.

Where approval for a pet is given by a landlord, conditions that a landlord could reasonably set for keeping pets should include:

- a condition requiring the pet to be kept outside the premises,
- a condition requiring the premises to be professionally fumigated at the end of the tenancy,
- where the pet is allowed inside the premises, a condition requiring carpets in the premises to be professionally cleaned at the end of the tenancy,
- given the negative impact roaming pet cats can have on native animals, a condition requiring the pet not be allowed to roam.

RENTERS' PERSONAL INFORMATION

Information that Can be Collected

Consultation Questions

10. Do you support limiting the information that applicants can be asked for in a tenancy application? Why/why not?
11. 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.
12. Do you support the use of a standard tenancy application form that limits the information that can be collected?

We support limiting the information that applicants can be asked for in a tenancy application to that which is necessary as it is important for people's privacy to be protected, particularly as cyber security threats and breaches become more sophisticated and prevalent.

We agree that taking a combined approach to limit that information would provide the best framework. This should involve general rules about information collection consistent with the *Privacy Act 1988*, and the RT Act or regulations specifying certain information that can be collected as 'reasonably necessary.'

This would provide guidance and reassurance to agents and landlords that they are doing the right thing. We have no issues with landlords or agents only being able to collect the type of information set out in the table on page 10 – 11 of the Consultation Paper.

If the Act or regulations are clear about the limits on information that can be collected for the purpose of assessing a tenancy application, then there is no need to introduce a standard tenancy application form. This would just add an unnecessary administrative requirement. Flexibility for agents or landlords to design their own application forms, as per their own internal systems but guided by the limitations in the RT Act or regulations, would help to maintain business efficiencies.

Discrimination Against Rental Applicants

Consultation Question

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

Yes. By limiting the information that applicants can be asked for in a tenancy application to that which is necessary to assess and confirm that that a) the applicant is who they say they are, b) they can pay the rent and c) they are reliable and likely to look after the home, then the opportunity for discrimination should not arise.

If discrimination does arise, there are existing anti-discrimination laws as noted in the Consultation Paper.

Use and Disclosure of Renter Information

Consultation Questions

14. Do you support new laws that set out how landlords and agents can use and disclose renters' personal information? Why/why not?
15. What should applicants be told about how their information will be used before they submit a tenancy application? Why?

Yes, we support new laws to set out how landlords and agents can use and disclose tenancy applicants' personal information. So long as consistency with the *Privacy Act 1988* is maintained and the Government seeks to minimise any administrative burden this should assist with compliance.

For example, applicants should be told how the agent or landlord wants to collect, use and/or disclose the information – that is, for what purpose and for what time frame. This should be as specific as possible, so applicants are giving their informed consent. Applicants should also be told about:

- disclosure to third parties,
- the reasonable steps taken to protect the information from misuse, interference, and loss as well as unauthorised access, modification or disclosure, and
- the applicant's right to access and, if necessary, correct their information.

The development of a template or checklist to assist agents and landlords with the task of informing applicants about how their collected information will be used before they apply for a property could be beneficial.

How Renter Personal Information Should be Stored and Destroyed

Consultation Questions

16. Do you support new laws to require anyone holding renter personal information to secure it? Why/Why not?
17. How long should landlords, agents or proptechs be able to keep renter personal information? Please explain.

Yes, we support new laws to require anyone holding an applicant's or tenant's personal information to secure it, subject to it being clear what that means and the obligation reasonable. See our response to consultation questions 14 and 15.

In the context of a residential land lease community, keeping the personal information of applicants and tenants secure is a matter of best practice. It goes to an operator's obligation to exercise reasonable skill, care and diligence under the Rules of Conduct, in addition to any obligations they may have under the *Privacy Act 1988*.

In terms of when to destroy personal information, landlords, agents or proptechs should be able to keep an applicant or tenants personal information until there is no longer an ongoing need to retain it, consistent with the Australian Privacy Principles.

Renter's Right to View and Correct their Personal Information

Consultation Question

18. 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).

Yes, we support requiring landlords, agents or proptechs to give rental applicants' access to their personal information upon request and to take reasonable steps to correct personal information if required. See our response to consultation questions 14 and 15. This is consistent with the Australian Privacy Principles.

One concern is if a rental applicant wants copies of their personal information, then landlords, agents or proptechs should be able to charge a fee to recoup any costs (e.g., photocopy costs, reasonable admin fee, etc) associated with actioning that request.

Automated Decision Making

Consultation Questions

19. Are you aware of automated decision making having unfair outcomes for rental applicants? Please explain.
20. What should we consider as we explore options to address the use of automated
decision making to assess rental applications?

To our knowledge, automated decision making through the use of apps to sort, rate and rank rental applications is not a widespread practice in residential land lease communities. We defer to property technology companies that operate these apps, and those that use them, to provide feedback on these consultation questions.

DESIGN OF THE PORTABLE RENTAL BOND SCHEME

Consultation Questions

21. 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?
22. What should happen if the renter does not top up the second bond on time? Please explain why.
23. Should this scheme be available to all renters, or should it only be available to some? Please explain why.
24. Who should have a choice on whether to use the scheme?
25. What other (if any) things should we consider as we design and implement the portable bond scheme? Please explain.

In designing and implementing the portable rental bond scheme, to receive support from all stakeholders the Government needs to acknowledge that the financial strain some tenants experience because of having to pay two bonds when moving between rental properties is not the most important consideration. That situation is temporary and only persists if the old landlord has a legitimate claim.

The most important consideration is the level of risk to parties that would be created by the scheme, most of which would be borne by new landlords.

In asking whether the scheme should be optional or compulsory, page 16 of the Consultation Paper makes the important point that if the scheme does not involve any risk to the new landlord, the chance of landlords preferring tenants who do not use the scheme and pay the full bond up front is less likely to occur.

We agree, however, the proposed design of the scheme unfortunately creates an inherent risk to new landlords because it would, as outlined on page 15 of the Consultation Paper, allow tenants to use their old bond for payment to the new landlord '**before the first bond is released.**' With such a risk for new landlords it would not be fair or reasonable to make the scheme compulsory for them.

Instead, as a way of balancing competing interests, the scheme should be available for all tenants to opt in. Where a tenant has opted in, the scheme should be compulsory for the new landlord only if the process allows for rental bond portability where there is no claim on the bond from the previous landlord when the bond payment to the new landlord becomes due.

In this situation, if the new bond costs more than the old bond the tenant should be required to pay the difference to 'top up' the bond for the new landlord within 14 days. If the tenant does not top up the new bond on time, the new landlord should have the option of issuing a termination notice to the tenant and the failure to top up the new bond on time should be treated the same as a failure to pay rent under the lease.

In a situation where a tenant has opted into the scheme, but there is a claim on the bond from the old landlord, participation by the new landlord should be optional. The same requirements and consequences should apply regarding the tenant 'topping up' the new bond, either because the new bond is more expensive and/or there is a claim on the old bond by the old landlord.

If at any point a tenant has previously failed to pay back a bond under the scheme, they should be prohibited from being able to use the scheme for a period of at least 3 years.

INFORMATION TO HELP RENTERS KNOW WHEN A RENT INCREASE IS EXCESSIVE

Consultation Questions

26. 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.
27. What do you think is the best way to collect this information?

We do not support the proposal for the NSW Government to collect information on rents or rent increases and make it publicly available for tenants.

It is important to note that the remedies in the RT Act concern whether or not a rent increase, or the rent payable where there has been a reduction or withdrawal by the landlord of any goods, services or facilities provided with the residential premises, is '**excessive'** – not whether the rent increase or rent is 'fair' or 'unfair.' The use of this language in the Consultation Paper is erroneous and misconstrues the rights of a tenant.

To make an assessment about 'excessive' rent, tenants already have easy access to sufficient information that is publicly available. The information not being in a 'central source' has little, if any, impact because anyone with access to the internet can search on www.domain.com.au or www.realestate.com.au, or even local real estate agent's websites, to find information about 'the general market level of rents for comparable premises in the locality or a similar locality.' The filters on these websites allow for tailored searches.

The 'general market level of rents' is the first matter in the list of matters set out in section 44 (5) of the RT Act, which the NCAT may have regard to when determining whether a rent increase or rent is excessive, and it is the only matter that would require such information. For all the other matters in section 44 (5) (c) - (g), supporting information can be easily gathered by the tenant, through photos, copies of receipts, etc, prior to their claim.

Requiring landlords or their agents to report rent increases to the NSW Government will create another administrative cost for them to comply with, as well as costs for the Government to set up and maintain the collection system. Considering it would be useful for only one of the matters that may be considered by the NCAT, and the fact that no cost benefit analysis appears to have been undertaken for this proposal, we cannot support it.

In the alternative, a voluntary survey of tenants, landlord or their agents, asking if and by how much rent for a particular property has increased throughout the tenancy, is unlikely to produce reliable data.

By its nature and the intended purpose of the data, there will be survey respondents who do not provide accurate, honest answers. This would not, and should not, be considered satisfactory information to support a claim in the NCAT.

OTHER CHANGES TO IMPROVE RENTAL AFFORDABILITY

Clarifying the Limits on Rent Increases

Consultation Questions

28. 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.
29. 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 have no issues with the RT Act being amended to prohibit rent being increased more than once in 12 months, even if a tenant has changed their agreement type.

This is consistent with home owners' site agreements in residential land lease communities. Under the RLLC Act, where rent is increased 'by notice' there is a limitation that site fees must not be increased more than once in any 12-month period and most operators, for ease of process, apply the same period for tenants.

Other Options to Address Affordability

Consultation Question

30. What do you think about the above options? Please provide detail.

We strongly disagree with the suggestion of requiring a landlord to prove that a rent increase is not 'excessive' where, for example, a rent increase exceeds CPI over a certain period.

Increases in the CPI are not an accurate reflection of increases in rents for all rental properties. There are many factors to be considered, such as those set out in (but not limited to) section 44 (5) of the RT Act.

Further, in bringing a claim in the NCAT that a rent increase or rent is 'excessive,' the onus of proof appropriately lies with the applicant (the tenant) because the fact of that assertion is a condition precedent to their right to bring the claim. There is no justification in these circumstances to create a reverse onus on the landlord to establish that a rent increase is not 'excessive,' while the tenant carries little of the burden. This would be unreasonable, as landlords do not have a monopoly on the information needed to support such a claim.

As outlined in our response to consultation questions 26 and 27, tenants have easy access to sufficient information that is publicly available, as well as their own records, to make an assessment about 'excessive' rent and the NCAT has power to consider many factors. There is no difficulty in tenants proving a genuine case of 'excessive rent,' and no data or evidence to the contrary has been presented in the Consultation Paper.

Even if it were demonstrated that tenants find it difficult to prove a rent increase or rent is 'excessive,' that in itself is not a justification for placing the onus of proof on a landlord. It would need to be established that such a change is necessary and proportionate.

In relation to the options of amending the criteria in the RT Act for when a rent increase is 'excessive', the current list of factors the NCAT may consider when making an assessment are appropriate. The NCAT already has flexibility to take into account 'any other matter it considers relevant' under section 44 (5) (h) of the RT Act.

OTHER CHANGES TO MAKE RENTAL LAWS BETTER

Telling Renters about the Use of Embedded Networks

Consultation Questions

31. 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?
32. When should a rental applicant be told that a property uses an embedded network?
33. What information should a renter be told about a rental property using an embedded network? Please explain.

We support laws to require landlords or their agents to tell tenants if a rental property uses any embedded network. As noted in the Consultation Paper, embedded electricity networks exist in residential land lease communities and operators already have disclosure obligations

to tenants under the standard form residential tenancy agreement, as well as under Condition 2 of the Australian Energy Regulator's (AER) *Retail Exempt Selling Guideline, Version 6, July 2022* (Retail Guideline) and Part 4.8.1 of the AER's *Electricity Network Service Provider – Registration Exemption Guideline, Version 6, March 2018* (Network Guideline).

Tenants are provided the required information about the embedded network in writing at the start of their tenancy agreement, which is appropriate.

In relation to what information a tenant should be told, what is set out in the AER's Retail Guideline and Network Guideline is comprehensive, particularly in relation to the tariffs and all associated fees and charges that will apply to the tenant in relation to the supply and sale of energy.

Free Ways to Pay Rent

Consultation Questions

34. 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.
35. 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 see no issues with a change to section 35 (2) of the RT Act to require a landlord or landlord's agent to permit a tenant to pay the rent by at least one means that is free (other than bank fees or other account fees usually payable for the tenant's transactions) and that is 'reasonably convenient,' as opposed to being 'reasonably available' to the tenant.

Most operators in residential land lease communities offer electronic ways to pay rent that are free to use and convenient (e.g., EFT, direct debit), so a change to the law to require an electronic way to pay rent that is free to use should not impact them.

CONCLUSION

Thank you for your consideration of the issues we have raised. As the peak industry body representing residential land lease communities in NSW, CCIA NSW is an important stakeholder in relation to the review of rental laws in NSW.

We look forward to our continued involvement in the consultation process.

Yours sincerely

Lyndel Gray
Chief Executive Officer