

Submission on Improving NSW Rental Laws

Thank you for the opportunity to provide comments on potential changes that are required in order to improve the rights of tenants in NSW. It should be noted that housing is a basic human right and everyone in NSW deserves a place to live that is affordable, secure and safe. This is unfortunately something that NSW (and Australia) has not done well to address in the past and previous inaction has unfortunately resulted in a rental market that consists of rents spiralling out of control towards highs that will likely increase rates of poverty nationwide. One in three people in NSW rent and the NSW Government needs to step in as soon as possible to protect our most vulnerable and to stop our key workers leaving to live in more affordable cities that have stronger rental protections.

Removing 'no grounds' evictions

Renters need homes that are stable and secure. Renters deserve to live without fear of unfair 'no grounds' evictions from our homes. Unfortunately, many tenants live in sub-standard conditions, potentially endangering their health as they are too afraid to speak up and request even basic repairs as they are afraid that they will be evicted. This is not good enough.

All renters should be provided with a valid reason and evidence for ending a tenancy. Landlords should be required to provide a reason to end a rolling (periodic) lease, and a fixed term lease after the end date, just like the model used in the ACT. 'The property will soon be sold' should not be added as a ground for eviction and any lease should move with the property between owners. A tenant doesn't get to terminate the lease if they purchase their own property and decide they want to move into their new house, so the same should apply to property owners.

Likewise, the change of use reason should also be restricted and it should be made explicitly clear that change of use to Short-term rental accommodation (STRA) is not a valid reason for ending a tenancy. There needs to be a mechanism to disincentivise the practice of offering short-term or periodic leases for part of the year and then evicting their tenants and leasing the property as STRA for a few months (e.g. during Christmas or Easter). STRA should have more restrictions on how long it can be leased each year (e.g. 180 days max state-wide and 60 days max in any LGA that has a rental vacancy rate below a certain percent such as the state or region average). While noting that this is currently regulated through the planning system, it could be more effective if restrictions are added that prevent investors from moving between the private rental market and STRA, such as not being able to relist the property as a rental until at least 12 months after listing the property as STRA.

Tenants should also be given considerably more time to leave if they are evicted for the reasons being proposed in the consultation paper. 90 days should be the minimum notice period required as finding a rental in the current market is stressful and time consuming. If a tenant finds a new property within the 90 days then they should be allowed to stop paying rent and leave at their earliest convenience. This gives the property back to the owner sooner and the tenant won't have to pay double rent.

It should also be noted that if "excessive" increases are defined, then there will need to be additional protections added to stop owners from evicting tenants, increasing the rent by an excessive amount, and then leasing it out to new tenants with a higher rent. This should ideally be prevented through stopping no ground evictions at the end of a fixed term lease (i.e. the tenant's lease is renewed or the owner can produce evidence to evict the tenant) and by adding a time period that must pass (at least 3-6 months) if a tenant is evicted, including at the end of a fixed term lease.

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Rental affordability

Housing is an essential service. Having a secure, safe, affordable home is vital to ensure a decent life. There are other essential services – energy, health, education and more – where cost is regulated to ensure the service is accessible for everyone. Fair limits on rent increases and rent setting should apply in rental housing too.

Renters need to be able to afford to pay rent without worrying that it will mean we go without other life essentials. Renters shouldn't have to worry about their next rent increase in 12 months' time. My rent increased by 12% in May this year and I am already concerned about what it might be next year. Unfortunately, my pay did not increase by 12%, however it is somehow acceptable that my rent (as well as everything else) increased greater than my salary.

Currently the failure of the rental housing system (with tight supply and little to no regulation of rents) has resulted in a situation in which market rents for residential properties are not generally in line with what the community considers 'fair market value'. 'Fair market value' is generally considered to be a price both parties are willing to enter into, where both are acting in their own best interests and are free of undue pressure. Rents are being set at a price that the consumer is 'willing to pay', that is - they accept the rent increase and may not move out. But this is only because they feel forced to. They are facing undue pressure given the current housing crisis.

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. To ensure fairer rents and access to housing market rents should not be relied on as the primary indicator of whether a rent increase is excessive.

There should be fair limits on rent increases in NSW tenancy law. I assumed that there were none and that it was a free for all, as that is how it appears as a renter. Currently the onus is on the renter to challenge a rent increase, and the only basis to do this is if they believe it is excessive. Many renters do not feel confident challenging an excessive rent increase, and they may worry the landlord may retaliate in response. For renters it can be very hard to access and provide the information and evidence required to demonstrate a rent increase is excessive to the Tribunal. This kind of information is more easily available to real estate agents and landlords. Landlords should be required to justify a rent increase if it is over a reasonable threshold (such as CPI). The onus should be with the landlord to show a rent increase is not excessive. Alternatively, IPART could determine what 'excessive' is every quarter which would then set the limit on increases and then landlords can increase (or decrease) rent based on demand and potentially offering deals or improving their rental properties in order to keep existing tenants as other rental properties might become more attractive with the knowledge that there's a limit on how much rents will increase each year.

Ideally, when determining what an excessive increase is, it should be compared to the most recent listing for that property. If a landlord evicts their tenants over the holiday period to list it as STRA, then the new rent should not be excessively higher than the last time the property was rented before it was temporarily STRA. Likewise, the once every 12-month limit on increases should apply to the property. QLD recently changed their laws and they found that landlords were taking advantage of a loophole resulting in thousands of tenants being evicted. They are now considering applying the once every 12-month limit to the property and not the lease. NSW needs to make sure that the same loophole is not inadvertently created here.

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As was noted in the previous section, if 'excessive' is defined, then there needs to be restrictions put in place to prevent landlords from evicting tenants every 12 months so they can increase the rent above what would be considered 'excessive'.

Portable bond rental scheme

Moving house can be very expensive for renters. The proposed portable bond scheme will allow renters to directly transfer their bond to another property when they move so they are not out of pocket in the immediate term.

If there is a difference between the bond required, renters should be given flexibility and an appropriate amount of time to pay the difference in bond between properties.

At a minimum this should be 14 days. More time – 30 days, or more than 30 days – would provide renters greater flexibility and help minimise the financial disruption moving often causes.

If a renter is not able to pay the difference on time, the new landlord's bond should be guaranteed in some way, with the money to be recovered from the renter. The renter should not be barred from the portable bond scheme in future, and landlords should not be able to end the lease.

The portable bond scheme should be optional for renters to use, however there should be some protections in place to stop landlords and agents from discriminating against tenants that are using the scheme. Ideally, they should not be told that is how the tenant is paying their bond.

Keeping Pets

The Tribunal should not be able to give the landlord the ongoing right to say no to animals at the property, each pet request should be assessed on its own merits.

There should not be a list of valid reasons for a landlord to say no to a pet. The landlord should go to the Tribunal for all reasons where the tenant does not agree.

Current renting laws already require that any changes made to the property require written notification and consent and must be paid for by the renter (this would include, for example, installing a dog door). Renters already pay bonds to cover potential damage to the property, whether this damage is from a pet or human. Landlords should be required to respond in a timely manner to a request for a pet.

There is also recourse for landlords to recoup any potential costs above the bond amount. It is already a term of the tenancy agreement that a renter abides by applicable strata by-laws.

Other legislation such as the Companion Animals Act already provides rules based on welfare concerns for keeping pets. Renters should not be subject to additional rules that others in the community are not required to follow.

Regarding the time for landlords to respond to a request, 21 days is way too much time. In the ACT, for example, landlords are provided 14 days once a request has been received to respond and must apply to the Tribunal within this time if they are seeking to refuse the request for a pet. This time period implies that the tenant should have to 'reserve' the pet at the store or kennel for 21 days. This is unlikely and they will most likely miss out on the opportunity to buy the pet.

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Personal information

Limits on the information that can be collected must be put into law, including through the introduction of a standard rental application form. This form should NOT include a question about pets as it is possible for landlords and agents to discriminate against tenants if they say they have a pet.

Strong limits on the information that can be collected can help to reduce discrimination against renters when they apply for a property.

Strong protections that provide specific guidance on how renters' information can be used and shared are required. These should apply not only to real estate agents, but also landlords, and property technology companies.

Renters' information should be kept (or stored) securely, and there should be appropriate time limits on how long information about a renter can be kept. Renters should be able to request access to the information a landlord or real estate agent holds about them.

Other changes

Embedded Networks

Landlords and agents should be required to tell renters that the property uses an embedded network in rental advertisements. Ideally, they should be banned or be more regulated, however I understand that the NSW Government is working on this as part of a separate reform and additional rights for renters can be addressed through other policy changes.

NCAT

The consultation paper makes several points about resolving issues through NCAT (the Tribunal). Any of the changes discussed in the paper should put the onus on the landlord to go to the Tribunal to resolve a dispute. It should be up to the landlord to apply to the Tribunal and explain why pets shouldn't be allowed, justify why their proposed rent increase isn't excessive, and to explain why the tenant is to be evicted. Landlords have chosen to invest in housing and therefore there needs to be an understanding that paying to go to NCAT is a cost that comes with owning an investment property, just like any other cost such as council rates and mortgage repayments. Tenants do not get to choose to be tenants as buying is often out of reach and is too expensive, so they shouldn't have to pay to go to the Tribunal to justify why they want to live comfortably or why they think their landlord is increasing their rent by an excessive amount.

Rent bidding

While not included in this paper, the NSW Government should consider changing laws around rent bidding. Unfortunately, the previous attempt did not go far enough and had to be dropped due to opposition. Ideally rent bidding should be banned altogether and landlords should be forced to reject offers above the advertised price. If the government doesn't want to ban it outright and wants to use the same approach that was announced earlier in the year then an option could be that they can only accept an offer a certain amount above the original advertised price and that price must be added to the advertisement for a certain number of business days to give other tenants an opportunity to apply, noting that a higher amount could not be accepted as a higher offer had already been put forward.

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Conclusion

The current rental laws heavily favour landlords over tenants. Tenants are often forced into leases or agreements that might have an adverse impact on their finances, social relationships and health because asking for something that might improve their living conditions or financial situation comes with the risk that they may be evicted. Real estate groups have said that these relatively minor changes will result in landlords selling and leaving the market. While this may slightly decrease supply in the short term, those properties will either be purchased by other investors and would remain as a rental (i.e. no change in rental supply); or they will be purchased by those wanting to leave the rental market, adding more supply as people move from being renters to owners (i.e. no change in rental supply). An investment property is a long-term investment of 20-30 years and taking advantage of those that cannot afford to go elsewhere by increasing rents by 10%-20% each year is morally wrong, and it is shameful that it is allowed to happen.

It is important that the NSW Government makes it clear that housing is a right, and that being a landlord comes with responsibilities. These changes should be implemented as soon as possible (ideally within a couple of months) as the current situation will continue to get worse for renters and those in our community that are the most vulnerable if changes are not made soon. While increasing supply will be the medium-to-long-term solution to preventing excessive rent increases, it cannot be seen as the only solution as real changes are needed immediately and within the next few months. All levels of government in Australia have failed renters over the past 20 years and it's now time that the government seriously considers making changes to bring the NSW rental laws into line with the rest of the world.