Improving NSW rental laws

A submission by Property Investment Professionals of Australia (PIPA)

Introduction

PIPA is the peak not-for-profit industry body established to support and advocate on behalf of Australian property investment professionals and their clients.

PIPA works to improve the professional standards of specialists servicing real estate investors and to raise awareness of the important role a robust property investment sector plays in the national economy.

Our member cohort services a client base dominated by everyday property investors who supply approximately 85 per cent of all Australia's residential rental accommodation. We thank the government for the opportunity to provide input on its proposed tenancy law reform.

How did we get here?

Much of the community sentiment and media commentary surrounding the current state of the NSW rental market is defined by a sense of shock. But demographers, property industry pundits, economists, and landlords themselves have warned for years that a perfect storm of factors was combining to put immense and unsustainable pressure on the private rental market.

The latest *Domain Rent Report* released last month shows the median asking rent for an apartment rose by 8.1 per cent in the June quarter to $670 per week, up 27.6 per cent year-on-year. The median asking rent for a house also rose by 6.1 per cent in the three months to June to $700, up 12.9 per cent in the past year.

These are big numbers, but it's worth pointing out that until a few years ago, annual rent increases were well below inflation for the decade prior, analysis by PIPA in conjunction with property academic Professor Peter Koulizos found.

Across Greater Sydney right now, the rental vacancy rate – that is, the proportion of all rented dwellings currently available to tenants – sits at just 1.2 per cent, according to SQM Research. Economists consider a vacancy rate below three per cent to be indicative of a supply crisis.

The number of dwellings being listed for rent in Sydney has been plummeting since early 2020, with new listings down almost 40 per cent, PropTrack data shows. Across the rest of NSW, that reduction is a hefty 23.6 per cent.

The evaporation of available rental properties did not happen overnight – but rather, has been well under way for years.

At the same time, demand for rental properties has soared over the past two years. A combination of drivers has seen the number of prospective tenants dramatically outstrip the volume of homes available.

Firstly, dramatically rising property prices over the past few years – up some 35 per cent from trough to peak in Sydney – have locked first-home buyers out of the market. People who would ordinarily move away from being renters now stay as tenants for longer. Likewise, skyrocketing purchase prices have dissuaded investors from purchasing new assets to rent out.

On top of prohibitive buy-in prices, would-be landlords have been put off by restrictive macroprudential policy changes, uncertainty surrounding taxation at a state and federal level, inconsistent as well as chopping and changing rules and regulations, and more.

Secondly, a long-term underinvestment in affordable and social housing by governments has seen waitlists explode and supply dwindle. The most vulnerable in the community are now forced to compete with the middle market for a dwindling number of rental properties.

Thirdly, international migration has bounced back significantly post-COVID, and those new arrivals to Australia are overwhelmingly more likely to rent than buy a home. Planned increases to Australia's migration cap will only see these numbers grow. Plus, the international student market is booming once again and that cohort rents within in-demand, inner-city suburbs close to campus.

And finally, the construction of new dwellings has slumped on the back of soaring materials costs, supply chain issues, instability in the homebuilding sector and general low buyer sentiment. Approvals and commencements are down sharply across the country, but particularly in Sydney.

The number of people renting the home they live in has soared over recent years. Renters are the fastest-growing tenure type in Australia. The number of renters in NSW alone has increased by 17.5 per cent since 2016, data from the 2021 Census shows.

At the same time, the number of people living in social housing has slid backwards sharply. This is not because demand has dropped. On the contrary, a continued lack of investment in homes for society's most vulnerable means the waiting list in NSW for social housing sits at 50,000.

In its latest report on housing tenure, the Australian Institute of Health and Welfare concludes: "The price of housing, changing household demographics and population increases have influenced home ownership trends and a move from home ownership to renting privately."

If more people are renting because buying a home has become harder and the way we live has changed, then surely the focus of governments must be to create more rental properties to cater to this growing demand. Penalising and demonising property investors, who continue to provide the overwhelming lion's share of those homes, is counterintuitive.

Private investors are carrying more and more of the burden of housing people in NSW and yet face the prospect of ever-tighter restrictions that at best inflict stress and a financial cost, and at worst encourage them to sell up and leave the market.

The rental crisis being seen in NSW – and indeed right across Australia – is a matter of basic economics. Demand is much higher than supply, and so prices are rising.

Landlords are being wrongly demonised

The vast majority of property investors in Australia are private individuals with just one real estate asset – commonly referred to as 'mum-and-dad investors'.

They typically buy an investment property, likely with equity from their family home, to help sure up their later retirement years. They put it up for rent at a price determined by the free market. They diligently monitor their asset, investing in its maintenance and upkeep. They take care finding the best possible person to rent their valuable asset via professional property management.

From these arrangements, a healthy and strong relationship between landlord and tenant is grown.

The average landlord is not some faceless corporation or greedy slumlord with dozens of properties, despite some of the headlines seen in recent times.

Australian Taxation Office figures show 71 per cent of people who own an investment property have just one, while a further 19 per cent have two. Less than one per cent of all investors own five properties, and fewer than one per cent own six or more.

And so, when looking for someone to blame for the state of the rental market, special interest groups, some politicians and the media find a scapegoat in the form of mum-and-dad investors with a single asset.

Landlords have been under attack for the better part of a decade. APRA has rolled out successive policies that dramatically limited investment activity. Dramatic changes to long-standing tax arrangements were major election platforms. Multiple states and territories rolled out restrictive reforms that made owning a rental investment less and less attractive and dissuaded prospective investors from entering the market. And then, the onset of the COVID-19 pandemic saw unprecedented uncertainty combine with emergency reforms, a mass exodus of tenants from inner-cities, and panic over the mid-term viability of investments.

December 2014	APRA introduces tough restrictions on lending, forbidding banks from growing their investor loan book by greater that 10% per month.
July 2016	Labor takes significant negative gearing reforms policy to Federal Election.

March 2017	APRA introduces cap of 30% of interest only lending for bank.
May 2017	The Coalition Government introduce the removal of claiming travel expenses to inspect a rental property and significant reform to fixture and fitting depreciation write-downs.
May 2019	Labor again takes significant negative gearing reforms to Federal Election.
July 2019	ARPA introduces 7% floor rate or 2% buffer rate to reduce lending capacity of borrowers.
March 2020	NSW Liberal Government introduces new tenancy reforms into law, giving tenants increased rights.
March 2021	Victorian Labor Government introduces new tenancy reforms into law, giving tenants greatly increased rights, including the removal of no grounds' evictions, and adds increased compliance costs for landlords.
October 2021	ARPA increases buffer rate to 3%, further restricting lending capacity for borrowers.
October 2021	Queensland Labor Government introduces new tenancy reforms into law, giving tenants increased rights and promises to introduce further reforms.
December 2022	NSW Greens introduce a Bill proposing a rental freeze.
June 2021	Queensland Labor Government proposes the introduction of higher land taxes based on owner's land holdings across Australia.
April 2023	ACT Labor Government introduces new tenancy reforms into law, including a cap on rent increases.
April 2023	Federal and NSW Greens announce proposal to introduce a rental freeze and a freeze to interest rates.
May 2023	WA Labor Government announces recommended tenancy reforms for WA, giving tenant greater rights.
May 2023	Victorian Labor Government announces 10-year increased land tax levy to pay for Covid-19 lockdown measures.

Each year, PIPA conducts research about the general mood of members and investors when it comes to their past, present, and potential investments. The 2022 PIPA Investor Sentiment Survey found 16.7 per cent of investors sold one or more properties in the previous 12- to 24-month period across the country. Some 65 per cent of those investors sold to owner-occupiers, seeing a dramatic removal of dwellings from the rental pool.

Using 2021 Census data as a baseline of 2.478 million private rental dwellings in Australia, this equates to a potential 268,975 properties being stripped from the private rental market in just two years. That is a potential reduction in rental supply of 10 per cent.

Indeed, in October 2022, realestate.com.au reported that 25 per cent of all property sales were by investors, but just six per cent of purchases were by other investors. That indicates a rapid exit of landlords from the market.

As rental demand surged over recent years, hordes of tenants were met with very little choice, intense competition, and inevitably higher prices. Despite this, legislative reform continued in many parts of the country, serving to further disincentivise investment, especially by concerned mum and dad investors, thus again reducing the supply of available dwellings, and putting upward pressure on rental prices.

Now, as large parts of NSW – and indeed the country – are gripped by a rental crisis, landlords are once again being blamed and attention is turning to tighter restrictions.

Those who ultimately pay the price for potentially unfair and inefficient regulation will be renters.

The impact of restrictive regulation is clear

The roll-out of tenancy reforms, and even just the mere mention of potential major changes, can significantly erode confidence among landlords.

The 2022 PIPA Investor Sentiment Survey found 25.1 per cent of respondents blamed changing tenancy legislation for the sale of an investment property in the previous 12 to 24 months. The reality was that holding a real estate investment had become too costly, too stressful, or too difficult because of burdensome reform.

Many others cited the sense that they had lost control of their assets as well as increased compliance costs.

For landlords, especially mum-and-dad investors, the decision to buy real estate to rent out is a big one. It comes with a high level of risk and a certain level of uncertainty, given the asset's success relies on free market movements. For that reason, even the suggestion of major reform can have serious damage.

Take Queensland's now-defunct land tax legislation. In June 2022, the State Government announced it would base its land tax calculations on an investor's total portfolio, and not just the properties within Queensland they owned. That meant that the value of an investment property in Sydney or Melbourne would help determine the amount of tax payable in Queensland.

The absurd change was later abandoned on the back of growing concerns – not just by investors and real estate groups, but independent economists.

But during the 98-day period the land tax changes were a reality, investment purchases as a percentage of all Queensland real estate transactions fell from 40.9 per cent to 33.6 per cent, according to analysis by MCQ Quantity Surveyors.

Similarly, at the time, PIPA members reported being concerned that the change would force them to sell their investments to avoid paying potentially thousands and tens of thousands of dollars more a year in the form of a new tax.

Sweeping reforms proposed in NSW come at a time when investor activity remains under significant strain. Indeed, the value of investor lending in the state is down 18.2 per cent year-on-year, the latest Lending Indicators data from the Australian Bureau of Statistics shows.

And you need only look at the trickle of rentals becoming available in the market to see that few investors are willing to act right now.

Landlords need certainty

An investment property is a costly, risky, and uncertain endeavour for Australians to take on. The financial significance means surety in terms of the quality of tenant, the length and security of a lease, and the care and maintenance of the home are highly regarded.

Proposed changes to how leases work risk rendering almost pointless the negotiated, binding legal agreements between landlords and tenants.

Parties enter into a lease under mutually agreed terms. This tried and tested method has served the private rental market well for decades. Governments across the country are now seeking to intervene via legislation to not only alter the terms of that contractual agreement but, in some instances, retrospectively enforce new rules causing further damage to investor confidence. A recent example is the implementation of 12-month rent increase limits by the Queensland Government, which have been applied retrospectively to the legislation.

PIPA urges the NSW Government to avoid making similar missteps when it comes to fundamentally altering the function of a lease – especially removing so-called ‘no grounds’ evictions.

The ability for a landlord to end a tenancy for any reason applies to periodic or ‘rolling’ leases and requires at least 90 days’ notice to be given. This is a fair and reasonable arrangement that honours the very nature of such fluid arrangements.

Fixed-term lease agreements provide certainty for all parties. Periodic tenancies by their nature have no set end date and give unequal power to tenants, who typically make use of not being locked in for a certain duration of time.

Removing the ability for landlords to bring a periodic lease to an end, with a reasonable period provided, is an alarming suggestion.

No landlord seeks to remove a tenant for no good reason. There are often myriad reasons that a lease ends, from an unsuitable tenant to a change in circumstances or the need to make major improvements to a dwelling.

A good tenant and a good landlord will maintain a secure arrangement for as long as possible. It is in everyone’s best interests.

The perception that somehow landlords have the upper hand and abuse their ‘power’ is not just baseless given the commercial considerations, but it is clear when looking at the available statistics.

The latest data available in the NSW Civil and Administrative Tribunal Annual Report for 2021-22 shows 30,503 applications were received by the tribunal regarding tenancy matters. That is a considerably small number when compared to the total size of the state’s rental pool. According to the Australian Bureau of Statistics, two million people rent a home in the private market in NSW.

Further, some of the significant cases called out in NCAT’s Annual Report relate to applications made by landlords against tenants seeking to recoup costs for serious damage and other matters.

Indeed, analysis several years ago by The Sydney Morning Herald found about 70 per cent of cases were brought by landlords in instances of unpaid rent or damage.

PIPA works primarily with everyday property investors however it also partners with property managers and other affiliated professionals who deal directly with tenants. It is PIPA’s observation that the exposure given to acrimonious dealings between landlords and tenants is disproportionate. The perception of some kind of David and Goliath battle simply does not reflect facts. What it does do is encourage unfair and detrimental policies.

On the overwhelmingly rare occasions when things do go wrong, there are rigorous safeguards in place for tenants. They have at their disposal a raft of stringent legislative measures as well as the services of the NSW Civil and Administrative Tribunal to arbitrate disputes.

As previously illustrated, rapidly rising rental prices has not been the norm over the past decade pre-COVID. Exceptional circumstances, the unintended consequences of emergency measures, a slump in supply and surging demand are to blame for the rent crisis.

And so, mention of reforms that seek to help renters know when a price increase is “excessive” is without detail on what such changes might look like.

Any proposed change that puts the burden on landlords to prove an increase is valid, when such movements are determined by the free market, is inherently flawed. The notion of having to prove a price is not excessive when it exceeds CPI will only serve to require more costly and time-consuming administration tasks from investors already lumped with excessive red tape.

And the analysis by Professor Peter Koulizos referenced earlier shows that rent prices have not increased above inflation in the decade before the unprecedented circumstances of the COVID-19 pandemic.

	Cumulative rent growth June 2012 – June 2022	Cumulative CPI June 2012 – June 2022
Australia	+11.0%	+25.6%
Sydney	+12.5%	+25.6%

Source: Peter Koulizos; Australian Bureau of Statistics

Prices are high because supply is low. Asking investors, especially mum-and-dad landlords, to do more and more will achieve nothing. Dramatically increasing supply is the solution.

On the proposal to better collect data on rental market movements, the government has conceded that its practices are inadequate and not timely. Everyone would benefit from more accurate information, but PIPA cautions that making assumptions based purely on price movements does not tell the full story.

Improvements in data collection should seek to better capture in real-time a variety of metrics, including supply and demand.

Owning an investment property is rarely big business

Mum-and-dad investors buy a property to rent out with the long-term ambition of seeing its capital appreciate, so they can help fund their retirement down the track. Few become landlords with the goal of immediately drawing a large income.

The cost of owning and maintaining an investment property is prohibitive. Even with the disproportionate airtime and column inches devoted to taxation policies like negative gearing and capital gains, the balance sheet of investors is not overflowing with zeroes.

This is especially the case in the current climate of punitive interest rate rises.

Between April 2022 and July 2023, the Reserve Bank has lifted the official cash rate from 0.1 per cent to 4.1 per cent. For an investor with a $500,000 mortgage, they might have paid somewhere $2070 per month 15 months ago but will now be forking out closer to $3280 per month. That’s more than $14,000 in extra mortgage costs per year.

Even at the most extreme end of the scale, the median weekly increase in rent for a unit in Sydney of $145 does not come close to covering the additional mortgage repayments an average investor is now forced to make.

And, of course, costs are not just increasing via interest rate rises, but also in terms of land tax, insurance costs, utility charges, stamp duty, maintenance and so on.

In short, investors do not want to risk owning a rental property if government intervention can at any time materially impact the value of that investment.

The issue of pets in rentals

PIPA acknowledges that owning a pet and renting a property can sometimes be tricky for tenants.

However, given the significant risks involved in investing in property, landlords deserve to have the ability to decide whether to allow an animal into a dwelling. There is great potential damage that can be inflicted on a property by dogs and cats, in the form of pest infestations, urine, claw scratches and biting.

PIPA members have regularly reported cost burdens from needing to repair damage from pets. There are instances of carpet needing to be totally replaced because of urinating cats. Flea infestations from improperly cared for felines and canines is a frequent occurrence. Scratches on hardwood floors and bite marks on door trims are also not uncommon.

The reality is that some properties are simply unsuitable for pets due to their size, location, or the density of strata-titled complexes.

Allowing landlords to make informed decisions about if and when they permit a tenant to have a pet should be maintained. Removing this right would be just another disincentive for investors to put their money into property or to remain in the market.

Should NSW push ahead with reforms that take this right away, PIPA has concerns about the model that would govern pets. A similar system to one adopted in Victoria, which sees landlords required to front the state's Civil and Administrational Tribunal to argue their case, would prove costly and burdensome.

Landlords in Victoria are forbidden from placing stipulations on pets in their investment properties, like asking for a dog to be housed outside. Conversely, tenants could have reasonable grounds to demand modifications to a property, like installing a dog door, which could fundamentally alter fixtures and fittings.

Also of concern is the definition of 'pet' in Victoria, which extends to poultry and other domesticated animals found on farms.

A side effect of such a model could see a rush on NCAT, which might delay the hearing of more serious cases, including the loss of income for investors or the process of recouping costs for damage.

Rental bonds work just fine

The collection of a bond is a modest way for landlords to protect their vital investments from damage or and/or the loss of rental income should a tenant stop paying before the end of the lease.

Even though the equivalent of four weeks' rent regularly does not cover some of the damage landlords must repair or the unpaid rent incurred in some circumstances, PIPA is supportive of the current system.

The suggestion that a bond could be "portable" would detach it from a particular property and allow it to be moved with a tenant to a new rental dwelling.

There is significant potential for harm. For example, if a rent is released before an adequate exit inspection has been completed, then it will create an administrative nightmare should a landlord have a valid and lawful claim on part or all of the bond.

A portable bond will create more red-tape for mum-and-dad investors who already struggle with an overburden of tricky regulation. There is a real risk of an administrative backlog forming in real estate agencies, which are already grappling with mammoth workloads due to the rental crisis and on the back of a skills shortage among property managers.

The end result will be that landlords are left out of pocket because a bond has been transferred to a different property. The onus will be on investors to wade through yet another layer of confusing reform.

Confusion about the mechanism of portable bonds and concern about the risk of systemic failings will be yet another reason why investors choose not to put their money into bricks and mortar. And has been evidenced time and time again, it may very well be a reason for existing landlords to exit the market.

PIPA recognises the difficulty faced by some tenants in financing a new bond while waiting for an existing one to be released. But portable bonds are not the answer. PIPA suggests there is merit in the government exploring alternative assistance measures.

Privacy must be balanced with informed decision-making

Recent high-profile data breaches in the telecommunications and health insurance sectors have rightly given all Australians cause for concern regarding how their private information is gathered and stored.

PIPA supports stronger measures to ensure the data collected in the process of assessing a tenant for a rental property is handled carefully and in accordance with privacy legislation.

However, the notion of reducing the type of information required to properly assess the suitability of a tenant is a dangerous one.

Landlords need to be sure that they are placing their valuable investment in good hands. Checking a prospective tenant's background, identity, ability to pay and rental record are crucial.

The failings of corporations in other industries should not be a reason to throw the baby out with the bathwater. The suggestion that some forms of information could not be collected opens landlords up to significant risk.

PIPA is supportive of new models that can make the process of finding a new rental property easier and quicker for tenants. There is room for a regulated system that allows tenants to be pre-approved for tenancies. For example, the creation of an external and government-backed pre-approval process would remove the administrative burden on property managers. It could also reduce concern about the collection and storage of personal information.

The focus should be on improving systems – not on simply and erroneously reducing the type of information required.

Similar to headlines about data breaches in other industries, the rapid evolution of new technologies like artificial intelligence in recent times has sparked debate about the proper use of automation.

PIPA supports any appropriately regulated technology that streamlines the tenant selection and screening process. Such efficiencies serve to benefit both the tenant and the landlord by saving time, cutting red tape, and even supporting unbiased decision-making.

Some final matters

On the final few proposals open for input, PIPA is supportive of tenants being clear about embedded networks within a property they are seeking to lease. However, the responsibility should lie with body corporates to make clear the relevant scenario in a strata-titled property.

PIPA broadly supports the appointment of a Rental Commissioner to speak on behalf of tenants in NSW. However, PIPA urges the government to also consider the needs of landlords who provide most of the dwellings rented by millions of people across the state.

As always, PIPA also urges the government to consider taxation reform that makes it cheaper to buy and hold a property investment.

Finally, PIPA is supportive of ensuring tenants have free and convenient ways to pay their rent. However, in most cases that is not something that investors control. There should be a consistent approach to the fees and charges levied on tenants outside of the agreed rental price.

How do we ease the rental crisis?

The broad consensus among economists and property investment professionals is clear – the issue of housing affordability will not be tackled until the supply of dwellings dramatically increases.

Action at a Commonwealth level is admirable but fails to adequately address the long-term issue of housing supply. The target of building one million new dwellings in a decade barely meets the current annual shortfall of new homes needed, let alone the projected increase in demand for dwellings. There is also little to guarantee how many of those one million properties will be affordable. On top of that, those major Federal Government reforms have stalled in the Senate, adding a further delay in relief for struggling tenants.

The use of large-scale build-to-rent developments, funded by corporate interests and superannuation funds, will add much-needed supply. However, it will take many years to see a meaningful impact given the long lead times needed for planning and construction. On top of that, the construction sector at present is not in a position to move swiftly on many, if any projects.

While there are already incentives for investors on depreciation for new builds, there should be further incentives to buy and build new properties.

Mum and dad investors have long supported housing in the new property space with new dwelling supply one of the key solutions to the current rental crisis.

In PIPA's assessment, quickly incentivising everyday investors to get into the private rental market is the most efficient and immediate way of easing pressure.