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Residential Tenancies
Policy & Strategy, NSW Fair Trading
Better Regulation Division
Department of Customer Service

residentialtenancy@customerservice.nsw.gov.au

RE: Improving NSW rental laws consultation paper

The Property Council of Australia welcomes the opportunity to provide feedback on the Government's proposal to improve NSW rental laws.

With population growth set to continue unabated, rental vacancies at historic lows and limited supply coming to market, the housing crisis will remain an enduring feature of the economy for the foreseeable future. Addressing the enormity of this challenge requires involvement from all levels of government and industry, with our members playing a significant role in developing the stock required to solve the housing crisis.

While the Property Council of Australia commends measures taken to protect and expand renters' rights in NSW, it is imperative that regulatory frameworks established to safeguard tenants also foster an environment that is conducive to investment, support an efficient and responsive private rental market, and deliver certainty for private investors to bring supply to market. NSW's rental market is reliant on small-scale 'mum and dad' investors, with the Australian Tax Office showing 71 per cent of property investors own one investment property and a further 19 per cent own two.

Alongside the improvements to rental rights in NSW, it is critical that the NSW Government make every effort to increase supply across the entire housing continuum and take steps to ensure existing rental stock is not absorbed into the home ownership market, which would only exacerbate the current rental crisis.

We acknowledge the consultation paper is seeking feedback on the following proposals:

- amend a landlord's ability to end a lease without a reason
- make it easier for renters to have pets
- increase protections for renters' personal information, and
- design of the portable rental bond scheme.

We understand the NSW Government is also considering other changes, including:

- collecting more timely data about rent increases and making this publicly available
- strengthening existing limits on rent increases
- telling renters about a rental property's use of embedded networks
- strengthening laws about free ways to pay rent, and
- considering how automated decision making may unfairly affect renters.

While we are broadly supportive of most of the reforms proposed in the consultation paper, we strongly caution against any policy action that resembles rent control. As evidenced in this submission, rent caps would only restrain supply, making existing rental housing harder to maintain at the levels required, and incentivising owners to sell or convert to other housing options.

Furthermore, it is critical that the NSW Government considers the distinct operating models of the Build-to-Rent (BTR) and Purpose-Built Student Accommodation (PBSA) sectors in any proposed revisions to the *Residential Tenancies Act 2010 (the Act)* in NSW. Throughout this submission, we have detailed cases where changes in certain provisions or standards may be inadvisable for those market participants.

The Property Council has included a detailed response to the key elements raised in the consultation paper below.

Removing 'no grounds' terminations

The Property Council understands the need for tenants to have security in renting – for all intents and purposes their residence is their home and tenants should feel safe and comfortable in their accommodation. However, it is the property owner that invests and cares for the property long term and they should retain rights to end a tenancy agreement for legitimate grounds.

Property owners are responsible for paying the taxes, rates and other regulatory charges associated with owning a home. It is also incumbent on property owners to make any necessary repairs and carry out maintenance to ensure the property remains liveable and in good working order. Taking into consideration the costs and risks of owning and making a property available to rent, the property owner should be afforded the right to maintain control over who rents the property and on what terms.

The Property Council does not support removing or limiting property owner's current rights to terminate a non-fixed term lease without grounds. If the NSW Government were to remove no grounds evictions, there is a risk of a disproportionate response from investors, who would simply exit the market. It would also make it more complex to own and manage a long-term private rental property.

Creating an overly prescribed new list of reasons (See Figure 1) that govern a landlord's ability to terminate a lease agreement may also generate too much inflexibility for the operation of an efficient and responsive private rental market.

Figure 1: New reasons for ending a lease

Reasons already included in the Act that landlords can use to end a tenancy	Proposed new reasons
<p>The renter:</p> <ul style="list-style-type: none"> • breached their agreement • didn't pay rent or utilities • caused serious damage or injury • used the property for illegal activity • threatened, abused or harassed the landlord, agent or a contractor • abandoned the property • didn't fulfill a rectification order • no longer meets criteria for social housing • refused alternative social housing • gave up possession of the property with consent of the landlord <p>The property:</p> <ul style="list-style-type: none"> • was sold and needs vacant possession • is unfit for habitation <p>The landlord:</p> <ul style="list-style-type: none"> • is suffering financial hardship 	<p>The property:</p> <ul style="list-style-type: none"> • is being prepared for sale • will go through reconstruction, repair or renovation that requires it to be vacant • will change its use (e.g. change from a home to a shop or office) • will be demolished <p>The landlord:</p> <ul style="list-style-type: none"> • will move into the property, or a member of their immediate family will move in

Source: NSW Department of Customer Service

As the consultation paper acknowledges, there are already protections in place for renters regarding notice periods for termination. For a periodic ('week-to-week' or 'rolling') lease, the landlords must give a renter at least 90 days' notice before ending a tenancy without reason. For a fixed term lease (tenancy for an agreed amount of time, such as one year), the landlord cannot end the tenancy during the agreed time (except in exceptional circumstances). We consider these current provisions sufficient and recommend they remain.

We understand the NSW Government is considering policies that would apply restrictions to the re-letting of properties under certain scenarios, including applying a six month ban after a landlord has notified the tenant that they will undertake repairs or move into a property.

The Property Council does not support a temporary ban on re-letting properties under these or other like scenarios. There may be several valid reasons why a landlord may decide to re-let a property following a notice to vacate for repairs or repossession, including changed circumstances, financial hardship or other such legitimate reasons that are unique to the operating model of market participants like Build-to-Rent (BTR) and Purpose-Built Student Accommodation (PBSA) operators.

Removing or limiting the rights of property owners in these scenarios may also have a deleterious impact on the responsiveness of the rental market to changes in demand. A six month ban on re-letting a property would effectively remove stock from the market during a period of chronic under-supply, worsening affordability for renters in direct opposition the government's aims to improve housing affordability and availability

Renter's personal information

The Property Council broadly supports efforts by the NSW Government to improve data protection for renters and reduce the risk that personal information is exposed due to cyber-attacks or data breaches. We generally support amendments to the Act which would:

- limit what information can be collected from applicants
- restrict how renter information is used and disclosed
- detail how renter information should be stored and destroyed, and
- ensure renters have a right to see and correct information held about them.

Beyond reducing the risk of data exposure, these commonsense measures will help to reduce the information burden on renters and improve the ease of validating the identity of prospective tenants, their capacity to meet rental commitments under a lease agreement and suitability for a given property. It should be noted however that implementation of a standard tenancy application may not be appropriate for some aspects of the market, including BTR and PBSA sectors, which operate under a different model to the rest of the private rental market.

Furthermore, measures to limit the use of technology which sort rate and rank rental applications and improve the efficiency of tenant matching, should be carefully considered. Technological innovation in the property sector has helped to improve outcomes for landlords, agents and renters alike. Prohibiting the use of certain data due to perceived issues of unfairness or increasing the regulatory disclosure burden for market participants using automated decision-making technology may prove counter-productive to the NSW Government's broader efforts to improve the efficiency of the rental market.

Portal rental bonds scheme

The Property Council supports measures which reduce complexity and requirements for landowners in accessing rental bonds and improve portability of bonds across tenancies. As outlined above, investment properties represent a significant financial commitment, and the rental bond plays an important part in ensuring this investment is protected. The rental bond effectively acts as a contractual agreement between the owner and renter, providing them with a sense of security and confidence that the other party will meet the conditions of the rental agreement.

The NSW Government's proposal to improve the rental bonds scheme through portability is a welcome initiative. The Property Council encourages a move to a single compulsory system for online rental bonds in NSW, underpinned by clear guidelines, certification and timeframes for deposit and withdrawal of funds. It is critical that the workability of this scheme is carefully considered. There are many factors that need to be considered when a tenant vacates a property, including the protections in place for the final completion of rental payments, claims on damages following a tenant leaving a premise and resolution of disputes arising from the collection of the bond from the previous landlord/agent, among others. If these and other issues are not comprehensively addressed in the design of the portable bonds scheme, the NSW Government could create an unworkable system for tenants, landlords and agents.

We understand the proposed scheme would involve a renter who has a bond held for their previous landlord being able to use this bond for payment to the new landlord before the first bond is released. If the new bond costs more than the old bond, the renter would need to pay the difference before being able to use the scheme and before entering into the new tenancy agreement. Under this proposed scheme, we recommend that if a renter fails to top up the second bond within the required timeframe, the new landlord should have the right to terminate the tenancy agreement and find a new renter.

It is important to note any proposed changes that would delay access to rental bonds or decrease bond or reletting fees would remove the incentives for both parties to meet the conditions of the rental agreement. Additionally, making it more complex for property owners to access rental bonds at the end of a tenancy could result in delays to repair, market, and relet a property, potentially increasing costs and negatively impacting prospective renters.

Rent caps and limiting rent increases

The Property Council understand the NSW Government is exploring ways to address rental affordability through limiting rent increases. These options include:

- Prohibiting rent increases twice in 12 months due to a change in rental agreement
- Preventing rent being increased more than once every 12 months for fixed term agreements of less than two years
- Requiring a landlord to prove that a rent increase is not 'excessive' where, for example, a rent increase exceeds CPI over a certain period, and
- Amending the criteria in the Act for when a rent increase is 'excessive'.

It is the Property Council's strong view that any introduction of a system that in some way caps or unduly interferes in the rental market will have the directly opposite effect of what should be delivered through reform of NSW's rental laws. Rent caps would only seek to restrain supply, making existing rental housing harder to maintain at the levels required, and incentivising owners to sell or convert to other housing options.

An estimated 2.2 million Australians have invested in property, and 71.5 per cent of investors only own one property, with 18.8 per cent owning two, and less than 10 per cent owning three or more. In their 2023 whitepaper *Private Renting in Australia – A Broken System*, PEXA and Longview outline the number of significant challenges that come with owning an investment property, including cost of maintenance and repair, real estate agency challenges, renter risks and impact of non-payment on cashflows, regulatory complexity, and the variable returns that owning a rental property provide. On the evidence, they argue many property investors – especially those who own units rather than houses – would have achieved better returns from superannuation than from property.

The potential imposition of rent caps and further restrictions will only further exacerbate the already significant challenges that come with owning a rental property, and disincentivise direct investment into housing at a time when any investment into property comes with a larger risk due to escalating cost bases and interest rates. Many rental property owners achieved no rental growth at all during the pandemic – in fact, during the

pandemic, most rental owners saw significant decreases in their rents. Rent increases since then have, on average, only returned rents to pre pandemic levels. Over the last two years especially, those owners have also seen their costs exponentially increase.

The evidence from large global markets which have implemented some form of rent cap nearly universally indicates that its longer-term effects of restraining supply outweigh shorter-term benefits of lower rental increases. For example:

- **New York:** regulated stock of housing with firmer rent controls has a significantly higher prevalence of maintenance issues than its unregulated stock.
- **Netherlands:** rent controls will be extended from 1 January 2024, leading to investors seeking to sell out of the market.
- **Ireland:** 'rent pressure zones' in Dublin and other major cities which cap annual increases has also dampened investor appetite, and the withdrawal of rental stock has meant average Dublin rents on new tenancies have increased 14 per cent over 2022 regardless of the cap.
- **Berlin:** most drastically, a rent freeze during the pandemic led to a 35 per cent reduction in rental supply within a year.

Even in the ACT, the only Australian market with a form of rent cap, rents have increased by 14 per cent since the laws came into effect in 2019, which is significantly higher than the national average of 4.6 per cent. This considers the entire period of the pandemic, where many rental prices were frozen or reduced due to a combination of regulation and consideration of tenant circumstances.

The imposition of rental caps would also have a severely negative impact on emerging asset classes like BTR and PBSA, which play a critical role in providing greater diversity in housing choice.

Build to Rent

BTR is an emerging asset class that hasn't reached maturity in Australia like it has in major American and European cities. BTR accelerates the delivery of housing supply to the community and provides a model of housing that supports a more professionalised system of property management and servicing than exists through the 'mum and dad' market. It provides the quickest at-scale solution to housing undersupply.

The BTR growth trajectory relies on a stable regulatory environment. A move to implement a rent cap will put at significant risk the pipeline of BTR housing we need, especially where other Australian markets have similar undersupply challenges that BTR can address. Many projects will no longer be viable, and the large number of potential tenants looking for stable rental housing will be forced to accept a poorer standard from a smaller pool of available homes.

Recent media coverage and commentary publicly indicating rent caps are being actively considered has already translated to significant unease in the market. We are already hearing evidence of major BTR capital raising activity being placed on hold due to the uncertainty generated by these statements. It is untenable to expect the market to be exposed to movement in costs, without having the ability to respond by adjusting rents.

The industry will not attract the investment needed if revenues are not allowed to respond to underlying movements in costs and relative returns across other asset classes.

Purpose-Built Student Accommodation

Purpose Built Student Accommodation (PBSA) is housing specifically designed and managed by private, commercial developers and operators. It differs from other rental options like rooming houses and private residential premises. PBSA buildings cater to students by providing purpose-built facilities located near universities and inner-city regions, offering scalability in bed capacity compared to residential colleges. These accommodations come fully furnished and include standard services such as Wi-Fi, utilities, and security, while students benefit from social events, study support networks, and communal amenity areas.

Moreover, PBSA prioritises student wellbeing through pastoral care services and offers academic and career support with tutoring services and career events. PBSA operators strive to ensure that their buildings and operations meet the high expectations of the student residents, aiming to provide students with quality accommodation.

Amidst NSW's growing housing and rental crisis, PBSA presents a unique and property-led solution. Since PBSA is exclusively designed for students, it offers purpose-built housing choices, reducing strain on the broader rental housing market. As a result, non-students in NSW have more opportunity to find available and suitable housing in the general residential market. The Property Council's Student Accommodation Council estimates that the absence of student accommodation would result in 800,000 additional students vying for accommodation across Australia's private rental market. In NSW alone, without PBSA, an estimated 16,500 additional renters would be competing for private rental properties.

Introducing rental capping in the PBSA sector would hinder its future growth and viability. Unlike the private rental market, PBSA caters exclusively to tertiary students studying in the local area. In fact, PBSA providers are prevented from renting to anyone who is not enrolled in an Australian educational institution.

When a student's enrolment ends, they are required to vacate their accommodation, leading to lease terminations – a practice uncommon in the private rental market where lease continuity is standard. As such, this also can then lead to broad scale vacancies at the end of the calendar year when students are not typically studying – and these rooms are not able to be rented to any other cohort. Additionally, PBSA offers comprehensive bundled services and amenities, all included in the rental price and provided by the PBSA provider, unlike the private rental market where tenants are normally responsible for procuring their own services.

The marketing and booking process for PBSA also differs substantially from the private rental market. PBSA rooms are advertised as room types rather than specific properties, and room allocation is typically confirmed closer to or upon the student's arrival, providing flexibility for incoming students. Availability of room types is promoted on various platforms, including websites, education agents, and accommodation agents. PBSA

providers accommodate students with varying study durations, necessitating rental rate variations based on the length of stay.

Restrictions placed on PBSA leases in this context would also mean that rental discounts (i.e., for longer term leases) would not be able to be varied either. This level of adaptability is not typically expected in the private rental market. Students can apply for PBSA well in advance to secure accommodation, even before knowing the specific room they will stay in. However, any accommodation offer is contingent on the student securing a place at a local educational institution, which may or may not happen, leading to cancellations of PBSA close to the date of arrival.

Given the intricate and variable nature of PBSA arrangements, the imposition of a rent cap, or indeed other rental tenancy restrictions on this sector, would be impossible to manage. PBSA plays a critical role in addressing the housing needs of the student population, offering purpose-built facilities and tailored services that alleviate pressure on NSW's private rental market.

Furthermore, given the importance of PBSA as an enabler for the education sector, it is incongruous to suggest that any PBSA provider would ask a student to leave a tenancy just so they could rent it to someone who is prepared to pay more. The Property Council is unaware of any examples of this occurring and in contrast our members have indicated that a PBSA provider is more likely to offer enticements for a student to stay, and reward loyalty as opposed to asking them to leave, as the provider would be looking for each tenant to introduce friends to come at stay in the same building or complex.

By recognising its distinct commercial residential concept, any attempt to impose rental caps would impede on the sector's growth and ability to adapt to the unique demands of the student demographic. PBSA's flexibility in accommodating varying study durations and its bundled amenities ensure that students receive a comprehensive living experience tailored to their needs, whilst at the same time freeing up the private rental market for NSW families.

The task of responding to the ongoing housing crisis cannot be underestimated and the Property Council cautions against reforms that are likely to impact investor confidence and result in a drop in rental stock in the market.

Yours sincerely,

Katie Stevenson

NSW Deputy Executive Director
Property Council of Australia