Friday, 11th August 2023

Submission to *Improving NSW Rental Laws*

From Sydney University Postgraduate Representative Association

Introduction

Sydney University Postgraduate Representative Association (SUPRA) is the representative organisation for postgraduate students at the University of Sydney. Established in 1970, SUPRA's constituency has grown to over 33,737 postgraduate students. SUPRA's casework and legal services handles over 2000 cases each year. SUPRA is governed by a democratically elected body of post-graduate students who attend the University of Sydney.

Our observations and recommendations in this submission are gleaned from our combined experience operating a casework, advocacy and advice service for postgraduate students at the University of Sydney. Based on the cases presenting at our Postgraduate Advocacy Service, we believe that students are facing extreme housing pressure, a lack of available housing, a lack of affordable housing, and are being forced into unsafe and insecure housing or face the risk of homelessness.

At SUPRA, we believe that housing is a human right. Our constituents deserve a safe, habitable place to live and study without experiencing severe financial stress.

Termination of tenancies

We believe that landlords should be required by law to provide a reason when ending any form of tenancy. No fault evictions indisputably serve the interests of landlords, whilst profoundly disadvantaging tenants. In our work alongside postgraduate students, we have observed landlords using no-grounds evictions:

- To eliminate long-standing tenants in order to increase their rental income.
- As a punitive measure, deployed against tenants who have requested maintenance.
- To eliminate tenants to whom they object based on race, ethnicity, religion or culture.
- To eliminate tenants that the landlord, or landlord's agent, has had a personal dispute with.

The Residential Tenancies Act presently protects the landlord's right to terminate with no grounds. This makes it virtually impossible for tenants to prove their landlord is engaging in actions that are punitive, discriminatory or otherwise unlawful. Even in cases where no-grounds termination was issued to the tenant mere days after an adverse experience with the landlord, the NSW Civil and Administrative Affairs Tribunal has been unable to find sufficient grounds to determine that this was a retaliatory eviction. Without no-grounds eviction, it would be significantly easier for the Tribunal to identify cases of retaliatory evictions.

Many tenants we support also pre-emptively regulate their behaviour because they are afraid of being terminated. They avoid making maintenance requests, consent to unreasonable access requests, and avoid asserting their rights under the law. We have supported tenants who accept extremely poor maintenance conditions, such as cracks in floorboards, reoccurring black mould, and leaking pipes. Students are particularly vulnerable to such exploitation, because they are often very low-income and required to live in high-rent areas near university campuses. If tenants had secure tenure, they would feel empowered to assert their rights under law and, as a result, have a safe home in which to live.

If a landlord wishes to terminate a tenancy on specific grounds, they should be required to show evidence of those grounds. After all, tenants wishing to leave a tenancy are generally required to show evidence of their circumstances if they wish to avoid a break-lease fee. Our organisation has supported tenants to access documents including police and psychology reports to attest to domestic violence. It is therefore reasonable that if a landlord wishes to remove a tenant from their home, they should also be required to provide evidence.

Landlords often terminate tenants, stating they intend to sell and/or that they intend to renovate. However, the renovations and/or sale are often far from concrete and tenants are often thrust into housing crisis. Mere 'intent' to sell or renovate, then, could be used as an alternative pathway to no-fault termination. To counter this, we recommend that landlords are required to provide evidence documenting existing concrete arrangements, such as:

- Bank statements **and** assets register demonstrating real need which cannot be resolved other than by terminating the tenant.
- Order of sale for the property

- Contracts and/or invoices with tradespeople which give a clear start date for the work.

It is important to note that landlords should be required to provide an assets register in addition to bank statements. Many landlords in NSW are 'asset-rich' and own multiple properties. Landlords should be required to explain why the sale of this particular property, and termination of these specific tenants, is the only possible way to ameliorate their financial difficulties.

If we view housing from a rights-based model, rather than a commodities-based model, it makes good sense that a landlord who is not financially solvent enough to provide a consistent home for tenants should not be able to continue renting properties. The evidence is clear—frequent moves due to eviction are extremely negatively impactful on the mental and physical health of tenants, particularly young adults. If a landlord is continually renting a property and then terminating tenants it does not make sense to continue to allow that landlord to continue to cause harm.

Pets

Increasingly, SUPRA supports postgraduate students with pets who are forced to choose between keeping their pet and homelessness. Our concern with adding more regulation to the process of refusing an application that includes a pet is that it incentivises landlords to exclude all applications that include a pet. Landlords or their agents would not be required to give applicants a reason, and so could effectively deny applications that include pets without needing to participate in any legislated process.

We suggest that all properties are presumed pet friendly, unless the landlord specifically applies to NCAT to be designated a no-pets property *before* commencing letting the property. NCAT should grant requests based on property suitability only, not landlord preference.

Information and Data Security

SUPRA would support limitations on the information that real estate agents and landlords can ask for in tenancy applications. We support this proposal for the following reasons:

(a) To reduce the risk of data breaches or leaks that occur increasingly in environments that store large amounts of personal data with little or no regulation in place.
(b) To protect tenants from improper handling of data. Real estate agents are not trained in confidentiality and/or client privacy, and they are not bound by legal or professional

standards to maintain confidentiality or privacy. Therefore, it seems clear they are not able to handle the vast quantities of information they currently request of prospective tenants. During the COVID-19 pandemic, many tenants were forced to disclose health information in order to be exempt from property inspections and/or open homes. Real estate agents routinely mishandled this health information. One student reported disclosing several health conditions and providing medical documents as evidence—only to hear the agent openly discussing the student's health conditions with a neighbour.

(c) To protect tenants from data harvesting. Most real estate agencies use email addresses provided for the purposes of rental application, for ongoing circulation of marketing materials long after the tenancy application has been processed.

(d) To ease barriers to accessing the rental market for individuals who have experienced homelessness. Many students seek support from SUPRA because they do not have 120 points of identification, due to periods of homelessness, lost or stolen documents, or because the student was born overseas.

(e) To reduce the risk of discrimination against potential tenants on the grounds of gender identity, sexuality, race/ethnicity, religion, culture, or profession. Prospective tenants who are not white have to search for a rental property seven times as long as white prospective tenants. There is strong evidence of significant discrimination in the rental market against Aboriginal and Torres Strait Islander peoples as well as people who have Indian or Arab heritage. There is also significant evidence of agents discriminating based on profession, with individuals who are sex workers or casual workers experiencing a significant rate of refusal on housing applications. It is worth noting, however, that the most common form of discrimination in the rental housing market tends to be based on income, and on legal name provided —and these are fundamental questions on any standard tenancy application form.

SUPRA would support a standard tenancy application form to limit the information that can be collected. We would highlight though that the information set out in the table above can still be used to discriminate against prospective tenants and can still put tenants at risk of data breaches and/or improper use of data by agents or landlords. We would avidly support strong laws to protect renters from disclosure of personal information, with penalties that would prohibit offenders from working in real estate for a set period. SUPRA would also endorse laws that require real estate agents to secure all personal data to a specified legal standard.

Applicants should be clearly informed about how their information will be used. Most sectors that deal with personal information in NSW are legally obliged to inform their clients of what their information will be used for, how it will be stored, and for how long. It is outrageous that real estate agents and landlords, who require prospective tenants to disclose profoundly personal information such as income, banking details, full legal name and identity documents, are not required to provide any specific information about what happens to this information.

Real estate agents, landlords and proptechs should not be permitted to store personal information beyond the life of the application and/or tenancy. If the applicant is rejected, or their tenancy ends, all information pertaining to that person should be destroyed at once. This is to reduce the risk of data breach or improper use by the real estate agent.

Automated Decision-Making

SUPRA has not had direct reports of automated decision making at this stage, but this is not surprising: real estate agents are not required to disclose to tenants whether automated decision-making is being used to process their application. It is our belief, however, that automated decision making reduces transparency in the assessment process, is profoundly susceptible to discriminatory outcomes based on gender identity, sexuality, race, ethnicity or religion, and will likely disadvantage people who receive a pension or government payment and casual employees with inconsistent earnings throughout the year. In other words, automated decision-making disadvantages the very populations at the heart of the housing crisis—the people who find it hardest to access accommodation. They are at highest risk of homelessness. We recommend automated decision making be prohibited.

Portable Bond Scheme

In general, SUPRA believes that rental bonds force at-risk people into homelessness, are regularly stolen by landlords, and are used as a tool to extort tenants for unnecessary labour when they end a tenancy. SUPRA advocates for rental bonds to be abolished in NSW. Bond returns are one of the issues we support students with most, and we support dozens of students at NCAT hearings regarding bond disputes every year.

However, SUPRA is not opposed to the use of a portable bond scheme as opposed to the current model of single-use bonds. If a portable bond scheme is to work to reduce the impact of the housing crisis, it must be compulsory for landlords to offer this option to all tenants. Making the scheme available only to some tenants, or on a discretionary basis, would invariably amplify the impacts of the housing crisis on vulnerable populations. Additionally, in order to retain any portion of a tenant's bond, landlords must be required to apply to the NSW Civil and Administrative Affairs Tribunal (NCAT) and provide clear evidence that their bond claim is legitimate.

Where tenants are required to 'top up' their bond, they should have thirty days to do so. We would additionally propose that tenants have the option to apply to NCAT for an extension if they are experiencing financial distress. Extensions should not be unreasonably withheld. If tenants do not top up in time, and have not applied for an extension, a reminder letter should be sent from Rental Bonds Online (RBO), reminding tenants of the outstanding amount and their options for applying for an extension.

Rent Increases

SUPRA believes that the relatively unregulated nature of rent increases in NSW is a significant driver in housing insecurity for the students we represent. Rental stress is so widespread that, for many tenants, a rental increase is essentially an eviction—when tenants are already paying between 40% and 60% of their income on rent, receiving a rental increase effectively means they must move out of the property. SUPRA strongly supports all limitations to rental increases. Tenants with stable rent are more securely housed than those without.

SUPRA supports many students each year trying to fight rental increases at NCAT. Presently, the burden to prove a rental increase unreasonable falls on the tenant. The tenant must have the time, money, and capacity to file a matter with the NSW Civil and Administrative Affairs Tribunal. The tenant must pay a fee to file the matter with NCAT, must research and gather evidence to prove the increase is unreasonable, as well as make time to attend a Tribunal hearing. It is unreasonable that the landlord who wishes to increase the rent does not bear any responsibility to prove that the proposed increase is reasonable. Landlords should always be required to prove that their rent increase is reasonable, rather than the other way around; we propose that landlords should be required to apply to NCAT for any rental increase.

The primary metric by which rent increases are assessed by NCAT—average rent for similar properties in the same suburb/postcode—is also unreasonable. In the current market, median rents in NSW routinely exceed 30% of the average income in the state. As a result, up to 35% of households are currently experiencing rental stress. This is exacerbated for students we work alongside, who are often forced to live in high-rent areas near university campuses or public transport but earn low incomes. We do not believe that market rent for similar properties is a reasonable metric to assess rental increases during a housing crisis. We recommend amendments to the Act that would remove market rent for comparable properties, as this exposes tenants to incredible risk.

Whilst SUPRA has no objection to the collection and publication of rental increase data, we do not believe this would be a meaningful exercise in reducing the occurrence of rent increases. We believe that the only way to reduce rental increases is through increased regulation.

A note on Purpose-Built Student Accommodation (PBSA)

Many students live in purpose-built student accommodation (PBSA). Because PBSAs are not covered fully by either the Residential Tenancies Act (2010) or the Boarding Houses Act (2012), students often experience unfair conditions and have no pathway for ameliorating them.

We have recently supported multiple students who terminate their tenancy with a PBSA and are charged both a termination fee and are required to pay rent until the room has been filled by the provider. We believe this is doubly punitive for the student—they are effectively punished twice for breaking the contract. Additionally, this arrangement places great power with the PBSA, who can stretch out a penalty by failing to find a 'suitable' replacement tenant. Additionally, many students report squalid conditions and weeks- or even months-long timeframes for essential repairs—with no ability to seek mediation through NCAT. Students also report wait times of more than sixty days for bond refunds, even when there are no issues with the property and no deductions to be made.

We advocate for the PBSA sector to be clearly defined as either a residential tenancy or a boarding house-style tenancy, and for the administration of tenancies to be brought under existing regulation.