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## **Submission regarding *Improving NSW rental laws consultation paper***

### **About NEWTAAS**

The New England and Western Tenants Advice and Advocacy Service Inc. (NEWTAAAS) has provided tenants and renters with information, advice, advocacy and representation since 1 October 2002. Since then, we have directly assisted more than 21,000 individual clients over more than 27,500 matters.

We are frontline workers with a deep understanding of the lived experience of renting in our region of NSW. We work daily at the interface where tenancy law, housing policy and economic systems meet the circumstances of the people living in the homes.

We are part of the state-wide network of Tenants Advice and Advocacy Services funded by Fair Trading's Tenancy Advice and Advocacy Program (TAAP) as part of the consumer protection brief. We cover the New England, Western and Far Western areas of the state, 57% of the state.

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### 1. About this submission:

Thank you for the opportunity to make this submission to assist government to improve the renting environment in NSW.

NEWTAAS supports the recommendations made in the submission by the Tenants Union of NSW.

We have focussed on specific issues in our submission where we believe the government could benefit from the experiences of our clients in our rural and regional area. We limit our submissions to providing case studies and statistics relating to our region.

## 2. About NEWTAAS clients:

We provide in this submission a selection of statistics and case studies that tell the life of the Service and the stories of our clients. It's very easy to think only of the numbers, or of the economic impact, but these case studies show the chaos and anxiety for families renting their homes.

### a. About NEWTAAS clients – the demographics:

We provide statistics from our records that are for a twelve month period, either calendar year 2022 or financial year 2022-2023.

To provide context to assist in understanding the figures, NEWTAAS covers 57% of the geographical area of NSW and receives 4.9% of the TAAP Network funding. We have three offices in the biggest towns in our region and are funded for 4.5 Full-Time Equivalent (FTE) workers, which we stretch to 4.9% FTE.

The SEIFA Index of Relative Socio-economic Advantage and Disadvantage from the 2021 Census shows that the NEWTAAS region contains seven of the ten most disadvantaged local government areas in NSW.

2021 Local Government Area (LGA) Name	Index of Relative Socio-economic Disadvantage		Index of Relative Socio-economic Advantage and Disadvantage		Index of Economic Resources		Index of Education and Occupation		Usual Resident Population
	Score	Decile	Score	Decile	Score	Decile	Score	Decile	
Brewarrina	818	1	866	1	789	1	917	4	1356
Central Darling	827	1	869	1	853	1	929	5	1725
Coonamble	883	1	893	2	922	2	919	4	3732
Fairfield	814	1	885	2	937	2	919	4	208475
Broken Hill	913	2	892	2	919	2	887	2	17588
Glen Innes Severn	906	2	891	2	929	2	907	3	8931
Inverell	928	2	906	2	950	3	899	2	17853
Kempsey	903	2	881	2	943	3	882	2	30688
Kyogle	921	2	906	2	950	3	929	4	9359
Liverpool Plains	926	2	905	2	951	3	896	2	7551

The available 2021 Census data also reveals some particular features of our region and confirm specific demographic trends. At a glance, we live across 55% of the state, have 4% of the population, we are older, younger, sicker and most definitely poorer. We are less educated, and less engaged in ongoing education.

We are less healthy. In NSW overall, 61% of the population has no long-term health conditions, and 8.6% have two or more long term health conditions. In the NEWTAAS region, those numbers drop to 52% and increase to 11.5%.

	NSW	Orana Far West	New England North West
Unemployment rate	4.1%	4.5%	6.2%
Youth unemployment rate	8.7%	17.9%	13.0%
Annual employment growth	1.0%	1.9%	-4.0%

All of this sounds like a very negative picture, but it isn't really. It just means that in our region, disadvantage is more concentrated. We have people who are older and frailer, sicker and less employed, less educated and poorer. That means they are less able to represent their own interests effectively, and that's where services like NEWTAAS make a difference. It's why we concentrate our service delivery on the people who need us most.

**b. About NEWTAAS clients – the issues:**

For some issues, tenants in our region are very similar to the rest of NSW. For many, they are not. There are particular issues that stand out to us, and that are explained by specific features of our region, our towns and villages, our demographics and our environment.

We deal with less land lease community matters in residential parks. We get less mould enquiries, particularly this past couple of years after so much flooding on the coast. We have seen about the same of rent increases and rent reductions, of social housing subsidy disputes.

We do more Appeals and Set aside applications to NCAT; we think this happens because our people are less likely to attend NCAT hearings either by phone or audio video link (AVL), and they come to us after the disaster. We know also that with the return of in-person hearings over this year, some tenants have far less capacity to travel to the hearing venue, which could be up to 200km away. A tenant without a vehicle and without the public transport availability between towns and with children in school is far less likely to attend a hearing. We provide NCAT Duty Advocacy wherever possible, mainly by AVL, to assist those tenants attending their hearing. Our primary objective is always the retention of the tenancy wherever possible.

We see more domestic violence issues, more social housing appeals and priority housing applications, more TICA database disputes. We've seen more vermin disputes arising from the mouse plague with the rain and good agriculture seasons over the past couple of years.

Tenants in the NEWTAAS region contact us at a higher rate when they receive no grounds termination notices. We deal with far more of those. We give a huge amount of advice about termination and NCAT, breaches of quiet enjoyment and failure to repair withdrawal of services.

Services	NEWTAAS cases	% of Network total
Bond: dispute	160	8.8%
Compensation claim: landlord	156	18.9%
Compensation claim: tenant	136	7.9%
Domestic violence	59	16.3%
Jurisdiction: other exclusion (usually <i>Gatsby</i> )	20	19.0%
NCAT: Appeals Panel	23	13.6%
NCAT: General advice	746	12.8%
NCAT: Set aside	24	16.6%
Pets dispute	16	9.3%
Privacy: quiet enjoyment	138	19.8%
Rent: arrears	252	14.4%
Rent: increase	71	6.5%
Rent: reductions	101	5.5%
Repairs: mould	97	4.3%
Repairs: non-urgent	290	8.4%
Repairs: urgent	163	7.5%
Repairs: vermin	40	13.2%
Sale of property: access	30	16.9%
Sale of property: general advice	39	13.6%
Tenant Database: Dispute with database	6	24.0%
Tenant Database: Dispute with landlord/agent	26	35.6%
Termination by landlord: breach by tenant	223	12.2%
Termination by landlord: no ground	187	9.6%
Termination by landlord: retaliatory	26	7.5%
Termination by tenant: breach by LL	21	3.1%
Termination by tenant: break early	65	5.6%
Termination: AVO	8	8.6%
Termination: break early with reason (s100)	3	4.5%
Termination: general advice	441	13.3%
Termination: lockout	18	17.1%
Termination: long term tenancy	2	6.7%
Termination: threat of eviction/lockout/warrant issued	21	8.0%
Termination: warrant issued	17	13.8%
Uncollected goods	24	12.1%
Utilities: dispute	58	14.3%

### 3. Question 3 - Removing 'no grounds' termination notices

NEWTAAS supports the Tenants Union submission, and provides the following additional details in support of removing both 'no grounds' termination notices for periodic tenancies and fixed term agreements.

The existence of end of fixed term 'no grounds' termination notices has a significant impact upon tenants within our region. We see specifically the effect of the significant decrease in the availability of affordable housing from the rent increases over the past few years. We also see the chilling effect on tenants who choose not to risk their tenancy by taking action against landlords who won't do repairs.

Over 2022 there was a jump from 20% to 28% of people contacting us who were at direct risk of homelessness. We have people tell us that they've moved into a caravan in their brother's back yard with their kids, into a tent on crown land, that they're living with their mum and they've split the kids up amongst the relatives. All of this points to the crisis in our region.

We know that our clients are not going to NCAT to assert their rights; that they are frightened of losing their home because there are very few homes to be found right now, and it is harder for the most disadvantaged to find something that is suitable and affordable. Our clients won't take the risk, because they can't afford to rock the boat. It is only in the most egregious situations that tenants will apply to the adjudicator for relief.

The chilling effect of 'no grounds' termination notices is clear in the types of applications being made to NCAT. Despite so much of the funding for NCAT coming from the interest from tenants' bonds, the power imbalance and the fear of eviction is on bleak display with these numbers from our region from 2022:

Private Eviction Applications	Social Housing Eviction Applications	Housing NSW Eviction Applications	Community Housing Eviction Applications	Aboriginal Housing Eviction Applications	Repair Applications
482	722	174	425	123	20
↑ 14.49%	↑ 24.91%	↑ 42.62%	↑ 48.60%	↓ 27.65%	↓ 25.93%

#### The impact of 'no grounds' notices:

These are some of the stories of tenants and their families from across our region who have received 'no grounds' termination notices.

We cannot help them. We cannot prevent the loss of their home. All we can do is beg their landlord and agent to reconsider, and NCAT for a little more time.

It's really important that government recognise that this is the reality of the situation. Right now, there is no obligation on the landlord to listen, or to acknowledge the people living in

the home. There is no dignity and little respect for tenants in this situation. They are at the mercy of the market.

We are witness to the quiet despair, to the willingness of parents to do whatever it takes to keep the roof over their heads, to the anger and frustration and tears as tenants struggle to find another home while continuing to keep normal life going for their families.

When there is nowhere else to go and the family stays, renting families receive the ultimate humiliation of being removed and locked out by the Sheriff accompanying the agent and the locksmith. We are witness to the distraught parents and crying children.

We stress that all of these case studies are everyday situations faced by normal tenants and their families. These are not exceptional circumstances anymore.

- **Unable to find another home in a medium town**

The tenants are an Aboriginal couple with five children, renting through a private real estate agent. They received a ninety days 'no grounds' termination notice. They have been applying for houses with no success. The father works two jobs to support the family and they don't fit the criteria for social housing, as too much money is coming into the household. They have been told by the community housing provider that they can't get assistance there. The advocate rang the agent and was told that the notice would not be revoked. Three weeks after the date for vacant possession passed, the family were able to get a smaller house for the same rent in a nearby village.

- **Small family in a small town**

A single father and his two children, aged three and five years, have reached the end of their three month lease and have been issued with a 30 day 'end of fixed term' notice to vacate, expiring on 23 November 2022. We made the tenant aware that if they were unable to find alternative accommodation they were likely to be evicted by an order from NCAT before Christmas, as termination applications continued throughout the Christmas period.

- **Carer grandmother in a medium town**

Grandmother had rented the home for the past 18 months and was on a periodic tenancy. She is the carer of her grandchildren, aged fourteen and eleven. The younger child is autistic. The tenant works part-time in addition to carers payment, and has been told by community housing that she is not eligible for social housing. She has commenced looking at other accommodation options, however there are very few rental properties available. The local market is being impacted by the expansion of the mining industry there, with the majority of local rental properties being rented by the mining industry.

Grandmother was understandably very worried that she would be unable to secure a new home for her family before the date for vacant possession and she was extremely concerned about the effect this will have on her grandchildren, in particular her autistic grandson.

The tenant believes the termination notice was given because of her requests for repairs at the property throughout the tenancy.

- **Working family in a regional hub**

The tenant lives with his partner and children. After they received the notice, they asked the agent if they could stay if they paid a higher rent. They were told that the owner intended to refurbish the premises and rent would likely double and they wouldn't be able to afford it.

By the date of vacant possession, the tenant had applied for fifty houses over the ninety days. They been refused for forty-five and was still waiting to hear about the other five.

The tenant worked full-time in a good job and doesn't qualify for social housing.

- **Elderly couple in a little town**

The tenants are an older Aboriginal couple. He has ongoing health problems. After receiving a Section 85 termination notice, they actively searched for another home to rent. The only suitable accessible home was \$500.00 per week, out of their price range as they are on the aged pension. They don't want to move away from their home town.

- **Complex issues in a large town**

The tenant received a 90-day no grounds notice of termination to vacate the property. The tenant has a family with complex needs including mental illness and autism. She had recently had a stillbirth, and as a result the family was in crisis and neglected the property care. A letter accompanying the no grounds notice clearly stated that the tenancy was being terminated because of the property care.

The tenant and the agency verbally agreed that if she would remedy the alleged breaches, the landlord would withdraw the notice of termination. With the support of family and services, the property was brought back up to the standards it was at the beginning of the tenancy.

Unfortunately, one month before vacant possession had to be given, the agency then informed the tenant that they would pursue the 'no grounds' termination, and also told her that they would not assist with finding new premises to move to.

The family became homeless. Had the notice of termination been for breach - as was alleged - the Tribunal would be unlikely to terminate the tenancy, because the breach has been remedied. However, previous changes made to the *Residential Tenancies Act 2010* took away any discretion the Tribunal had to consider the circumstances of a case in 'no grounds' termination notices and mandated termination.

- **Cancer treatment in a tiny village**

The tenant is a single woman who had rented the home for five years. She has close family members living with her that she cares for. She had fallen into rental arrears after a diagnosis of serious breast cancer and the ongoing associated treatment costs, including extensive travel for treatment away from her home. The rent matter was resolved and the tenant caught up, however a 'no grounds' termination notice was issued.

The landlord applied to NCAT for termination of the tenancy. The tenant was receiving ongoing post surgery radiation therapy at the time of the hearing. We successfully negotiated for an additional three months before the tenant would be evicted due the severity of the tenant's illness.



- **From house to car in a medium town**

Following a termination notice for end of fixed term being served, and termination of the tenancy by NCAT, the tenant moved himself and his adult son into their station wagon before the Sheriff attended to evict them. The tenant did not know what they were going to do and how they would survive. The agent told the tenant that the landlord wanted the unit back and was putting the rent up to more than the tenant could afford.

**Recommendations:**

We submit that termination notices for Section 84 end of fixed term and Section 85 periodic agreements are no longer tenable within the changed housing market.

We support the reasonable expansion of the grounds for termination.

We support the Tenants Union recommendations that suitable safeguards be made against misuse of the grounds for termination, and provisions made for compensation for expenses that would otherwise have not been incurred where the provisions have been misused.

#### 4. Question 5 – Renters’ personal information

NEWTAAS supports significantly restricting the rights of landlords and agents to obtain and keep the personal and private information of applicants and tenants throughout all stages of application, tenancy and post-tenancy. We support the submission of the Tenants Union of NSW.

We support the introduction of a verify but don’t hold mechanism for identification and assessment.

We confirm that tenants with certain characteristics and circumstances in our region have been actively discriminated against, and that the unrestricted right to ask for and keep personal and private information of applicants and tenants has contributed to that discrimination.

We provide the following case studies from our records.

- **Tenant applying for new tenancies in large town**

A tenant had terminated a previous tenancy with a domestic violence termination notice which had been supported by an Apprehended Domestic Violence Order (ADVO). In applying for a new tenancy, a property manager remembered her from that previous tenancy, and rang the previous real estate agency. Copies of the ADVO were obtained and the tenant was questioned about her personal life and the likelihood of property damage at the new tenancy.

The tenant felt she had no option but to answer the questions and was too afraid of refusal of her application to complain to Fair Trading. She believed that she was already the subject of office gossip and that her applications for other potential tenancies were at risk.

- **Applicant in large town**

The tenant wrote to us in part:

*I am writing to express my concern about a real estate’s request for three months of bank transaction history as part of the rental application process. I find this request to be excessive, intrusive, and potentially unethical.*

We advised the tenant that he was able to redact or withhold the information but there were no restrictions against asking for the information. We also told him that withholding the information could affect the agent’s assessment of his application. We referred him to his Member of Parliament for law reform.

- **Complicated history and data misuse in a large town**

Following the difficult ending of a tenancy when a landlord was required by NCAT to pay compensation to the tenants for breaches of the Act, the agent listed the tenants into a private but connected component of the TICA database products called Virtual Manager. The tenants were not listed on the main TICA public database, but on the Virtual Manager.

That listing within the Virtual Manager activated a “push” notification where every time the tenants made an application to another agent, and the TICA public database was searched on their names, the listing agent was notified of the enquiry through the Virtual Manager. In addition, the listing agent was provided with the name and contact details of the agent running the search, allowing the listing agent to contact the enquiring agent without the tenants’ knowledge or consent. By virtue of that push notification, the listing agent could have a conversation with the enquiring agent.

When an enquiry is made to the TICA public database, this information is automatically fed into Virtual Manager. There are two ways in which a tenant’s application could be affected based on the enquiring agent’s actions:

- the TICA database could show a valid default to the enquiring agent, or
- any agent who has listed the tenant on Virtual Manager will be alerted to the enquiry, and could contact the enquiring agent to discuss the tenant

The tenants’ personal information was used in such a way that there was no disclosure of use by the listing agent, no opportunity to limit, modify or remove the personal information, and no mechanism for enforcing the limitation, modification or removal of the tenants’ personal information.

Theoretically, tenants can be tracked on Virtual Manager for the rest of their lives without consent, and must simply *trust* that former agents will never use their personal information for inappropriate reasons.

The way in which Virtual Manager operates essentially facilitates the very behaviour by agents that the database provisions of the *Residential Tenancies Act 2010* was attempting to prevent.

The *Act* imposed significant restrictions on the circumstances in which tenants can be placed on residential tenancy databases. It ensured that tenants could only be listed if there was outstanding debt, or if their tenancy was terminated by the Tribunal. It also restricted all listings to a maximum of 3 years, regardless of the circumstances at the end of the 3 years. Given that listings are significantly restricted—and given that even *lawful* database listings must be removed after any outstanding debt is paid, or after 3 years—the underlying theme of Part 11 of the *Act* is that tenants have an implied right to be forgotten once their tenancy is resolved. Tenants should not be subjected to potential lifelong, unregulated tracking by real estate agents.

A listing on Virtual Manager should be regulated as a listing on a tenancy database as defined at Section 209 of the *Residential Tenancies Act 2010* due to the active data connection and push notification system.

While we understand that there was a determination by Fair Trading on 8 April 2011 that Virtual Manager at that time was not considered a tenancy database, we submit that decision should be reviewed. Changing sophistication and use of data management systems such as those proffered for use within the industry justify a re-evaluation.

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This case study shows that retention and use of a tenants' private and personal information does not end with the end of the tenancy, or even when the tenant is no longer listed on a public access tenancy database. The capacity to retain and misuse the information continues to exist and is unregulated.

## 5. Question 8 – Rental affordability

NEWTAAAS supports the submission of the Tenants Union of NSW with regard to rental affordability.

We submit that significant changes in how rent increases are permitted should be made. In particular we submit that there should be a reversal of the onus of proof in applications made to NCAT. Section 44 of the *Residential Tenancies Act 2010* requires the tenant to apply for an order that the rent is excessive. The tenant must provide the evidence to support that application, and 44(5) lists evidence that NCAT may have regard to in its considerations.

Tenants have less access to resources by which to determine how much the rent should be. In particular, a higher proportion of tenants in our region have less capacity to successfully challenge rent increases. There is also a chilling effect that occurs due to the existence of ‘no grounds’ termination notices upon challenging a rent increase.

- **Rent increase or termination in a large town**

The agent arranged for an inspection of the rental premises. The tenant felt “blindsided” when, at the end of the inspection, the agent gave them a ‘no grounds’ termination notice and a rent increase notice. They were told that the termination notice could be withdrawn if there were no issues with the tenancy.

The rent was set to increase by 50%. The tenant felt that he was in some kind of truth or dare competition that he couldn’t win. The tenant agreed to pay the increase, and the tenancy continued.

- **Social housing increase in a village**

The tenant pays market rent for their Aboriginal housing property in their small town, so notification of the market rent payable must meet the conditions of rent increase notices.

The market rent has increased from \$190.00 per week to \$350.00 per week. There is only one comparable house for rent in the village. The onus of proof is on the tenant and the landlord’s agent has said there is no capacity to negotiate a small rent increase.

The following page contains publicly available data sourced from:

- NSW Department of Communities and Justice
- Fair Trading bond reports
- 2021 ABS Census

The bond data is not a complete dataset of new tenancies – not all social housing providers ask their tenants to pay a rental bond, so not all social housing is included in the dataset.

Postcode	Town	Number of Taxpayers 2020-21	Gross Median Taxable Income 2020-21	2021 Census Median Personal Income Annualised	Median Weekly Rent for New Bonds Year to March 2023	Annual change in Median Weekly Rent	Number Receiving Rent Assistance	Median Total Household Weekly Income	CRA to Taxpayers	Median rent 2023/median household income 2021, per week	Median rent 2023 / 2021 personal income
2357	COONABARABRAN	2,006	\$41,129	\$30,660	\$300	18%	270	\$1,145	13%	26%	51%
2390	NARRABRI	4,902	\$49,924	\$42,340	\$385	4%	645	\$1,604	13%	24%	47%
2824	WARREN	1,203	\$44,692	\$37,595	\$300	20%	165	\$1,276	14%	24%	42%
2825	NYNGAN	1,355	\$48,676	\$40,672	\$290	-3%	110	\$1,451	8%	20%	37%
2827	GILGANDRA	1,912	\$40,876	\$32,381	\$245	-13%	325	\$1,133	17%	22%	39%
2829	COONAMBLE	1,646	\$41,874	\$34,988	\$250	14%	245	\$1,279	15%	20%	37%
2835	COBAR	2,126	\$57,233	\$48,910	\$235	-2%	120	\$1,811	6%	13%	25%
2880	BROKEN HILL	8,994	\$50,886	\$33,997	\$300	11%	1,375	\$1,182	15%	25%	46%
2820	WELLINGTON	3,307	\$43,735	\$31,442	\$360	13%	575	\$1,122	17%	32%	60%
2821	NARROMINE	2,640	\$44,631	\$37,282	\$380	21%	320	\$1,318	12%	29%	53%
2830	DUBBO	26,000	\$52,824	\$45,573	\$425	6%	2,770	\$1,695	11%	25%	49%
2372	TENTERFIELD	2,515	\$35,187	\$26,854	\$400	14%	360	\$933	14%	43%	78%
2347	BARRABA	842	\$34,194	\$25,133	\$220	-24%	125	\$852	15%	26%	46%
2350	ARMIDALE	14,592	\$47,641	\$38,586	\$390	8%	2,370	\$1,459	16%	27%	53%
2354	WALCHA	2,100	\$39,170	\$35,666	\$300	-8%	155	\$1,242	7%	24%	44%
2358	URALLA	2,039	\$42,020	\$33,893	\$360	4%	235	\$1,213	12%	30%	55%
2360	INVERELL	7,666	\$44,888	\$33,997	\$350	6%	1,285	\$1,212	17%	29%	54%
2365	GUYRA	2,038	\$39,167	\$34,049	\$350	21%	220	\$1,146	11%	31%	54%
2370	GLEN INNES	3,845	\$38,095	\$28,262	\$300	0%	775	\$955	20%	31%	55%
2400	MOREE	5,341	\$50,745	\$44,791	\$300	0%	910	\$1,592	17%	19%	35%
2354	WALCHA/KENTUCKY	2,100	\$39,170	\$35,666	\$300	-8%	155	\$1,242	7%	24%	44%
2340	TAMWORTH	29,835	\$49,383	\$40,880	\$390	5%	4,695	\$1,468	16%	27%	50%
2343	QUIRINDI/CAROONA	2,649	\$43,176	\$34,414	\$350	3%	345	\$1,229	13%	28%	53%
2346	MANILLA	1,489	\$42,177	\$29,774	\$340	24%	275	\$1,083	18%	31%	60%
2347	BARRABA	842	\$34,194	\$25,133	\$220	-24%	125	\$852	15%	26%	46%
2352	KOOTINGAL	1,591	\$48,233	\$38,586	\$390	18%	180	\$1,396	11%	28%	53%
2380	GUNNEDAH	6,075	\$52,148	\$41,402	\$400	3%	765	\$1,590	13%	25%	50%