



Greens NSW Submission to

Improving NSW rental laws consultation paper 2023

Introduction

The Greens welcome the commitment from the government to improve NSW rental laws, and the opportunity to make a submission to this consultation paper.

We make this submission on behalf of the Greens NSW as the Greens Spokesperson for Housing, Renters and Homelessness, and as the Member for Newtown which has one of the highest proportions of renters anywhere in NSW, where 59.2% of people in our community rent.¹

NSW is in a rental crisis the likes of which we have not seen in generations.

Every single day, renters are being hit with rent hikes that they cannot afford or face unfair 'no grounds' terminations. Many are living with maintenance issues, mould and damp, and in substandard conditions that they are too scared to raise requests for repairs for in case this is met with an eviction.

Rents are increasing four times faster than wages, evictions are on the rise, and too many renters are just one rent hike away from homelessness. The NSW Council for Social Services estimates from the latest Census data that one in five renters are living in poverty.² With more renters than ever before living in housing stress as a result of paying more than 35% of their weekly income on rent.

There are now more than 2 million renters in NSW. More people, including more children and more older people, are renting than ever before and for longer. It is critical that we reform rental laws in a way that recognise that for many home ownership is not and will not ever be an option, and as such ensuring life-long renters have a secure, safe and affordable place to live is a critical responsibility of the NSW Government.

¹ Australian Bureau of Statistics, Census data for the Electorate of Newtown, 2021

² NSW Council of Social Service, Mapping Economic Disadvantage in NSW, April 2023



We welcome this consultation process and the priorities that the NSW government, and the newly appointed Rental Commissioner, are pursuing - all of which are desperately overdue reforms to make renting fairer.

Beyond this, we urge the NSW Government to act to ensure that the level of reform matches the scale and severity of the rental crisis - particularly given stagnant wage growth, cost of living pressures and the unaffordability of housing.

It is for this reason that beyond the specific issues addressed in this consultation the Greens are urging the NSW Government to act by:

- Imposing an urgent two year freeze on rents to immediately relieve the financial stress on on the 2 million renters in NSW.
- Reducing and controlling rents by making unlimited rent increases illegal, as well as prioritising people having a place to call home over investor profits.
- Massively investing in public, social, and affordable housing to ensure those who are living in poverty, are on low incomes or at risk of homelessness are guaranteed a home.
- Ensuring all new private developments include a minimum of 30% public and affordable housing, and that all affordable housing is in perpetuity, as a condition of development consent.
- Stopping the privatisation and sell-off of public housing and public land, requiring all developments on public land to be 100% public housing in order to address the public housing 'waiting list'.³
- Addressing the impact of those profiteering from short-term holiday letting and the housing crisis, by empowering local councils to set caps on short-term rentals in line with community need, as well as regulating and taxing the industry as a business and imposing a tax on vacant homes.

The Greens believe that housing is a human right, and that the government has a responsibility to ensure everyone has a safe, secure and affordable place to call home. Renting should be about providing someone with a place to call home, not a way for wealthy investors to make more profit.

³ The public housing waiting list in NSW currently has approximately 50,000 applicants, likely over 100,000 people 'waiting' for homes. Given the amount of public housing has been in decline, it is unlikely that the significant majority of these people will ever be made an offer, with the department's own site setting out that the wait in some areas is 10+ years. As such the idea that people are actually 'waiting' for an offer is questionable unless significant action is taken to massively boost public housing supply.



Without an adequate supply of public and affordable housing, along with other reforms to address affordability, renters living in housing stress will continue to feel the squeeze of rising rents and pressures of insecurity. It is critical that the serious power imbalance that exists between renters and their landlords.

Our submission sets out our position and recommendations in relation to the issues canvassed and questions raised in the consultation paper, as well as identifying a number of additional areas of rental reform that we believe need to be addressed as a priority that would fall within the scope of the current reform agenda.



Recommendations

Removing 'no grounds' terminations

1. That the NSW Government act immediately to end unfair 'no grounds' evictions and require all landlords to give a valid, limited reason to end either a fixed term or periodic lease.
2. That the prescribed reasons ('grounds') under which a landlord can end a tenancy should be limited beyond the proposed new reasons articulated in the discussion paper. Preparation for sale should not be a valid reason to terminate a lease.
3. That a landlord be required to provide evidence to prove the termination of the lease meets the prescribed reasons, and that a range of penalties, including compensation for the tenant, be imposed on the landlord where there is a breach.

A new model for keeping pets

4. That the NSW Government urgently amend all relevant laws and regulations to enable renters to have the same rights as owner-occupiers when it comes to having pets.
5. That any reasons for refusing a pet should be limited to the existing laws, strata requirements and animal welfare protections also applicable to owner-occupiers.

Renters personal information

6. That the NSW Government act to put significant restrictions on the type, quantity and retention of personal information required from tenants in order to ease the burden on renters applying for properties, reduce risks of privacy breaches, as well as limit avenues for potential discrimination.
7. That the NSW Government introduce a standard rental application form as a means of providing greater protection for renters during the application process and limiting intrusive and unreasonable requests.



8. That the NSW Government establish and resource a program within NSW Fair Trading or the Office of the Rental Commissioner, to educate and raise awareness about obligations and protections, as well as to receive and monitor complaints, related to discrimination.

Portable bond scheme

9. That the NSW Government establish a portable bond scheme that is accessible to all tenants.
10. That landlords be advised only that the bond has been paid, without disclosing whether or not the tenant is using the portable bond scheme.
11. That any measures put in place to require the tenant to top up the second bond should not risk the tenant being evicted from their new home.

Information to help renters know when a rent increase is 'excessive'

12. That the NSW Government act to prevent 'excessive' rent increases by requiring landlords to provide evidence and justification for rent increases, simply ensuring a tenant knows whether or not a rent increase is 'excessive' doesn't help a tenant who fears their lease will be terminated if they raise concerns or challenge this increase.

Other changes to improve rental affordability

13. That the NSW Government implement a two-year rent freeze set at 1 July 2023 rents, to alleviate immediate financial pressures on renters while the other reform measures are being implemented.
14. That all rents in NSW be capped so increases can be no more than 2% every 24 months, and apply to the property, not the tenancy.
15. That an inquiry be established to examine and report on rent controls and rent setting measures that would address the increasing unaffordability of rent, rental stress, and housing insecurity, in the context of stagnant wage growth and the cost of living crisis.



Other changes to make rental laws better

16. That the NSW Government require landlords and real estate agents include information, including expected costs and consumer protection details, for properties that use embedded networks in rental advertisements, inspections and as part of the application process.
17. That the NSW Government legislate to ensure that all renters have access to one free, easily accessible and electronic way to pay rent.
18. That the NSW Government act to ensure landlords and real estate agents provide renters with clear, comprehensive information relating to strata rules and ongoing maintenance issues during the advertisement, inspection, and application process.

Additional recommendations⁴

19. That the NSW Government act to reduce homelessness by legislating to ensure that no one renting a property can be evicted into homelessness.
20. That the NSW Government legislate to end rent bidding and ensure that all rental properties have an advertised price and prohibit a higher price being paid.
21. That the NSW Government implement requirements for minimum energy efficiency standards on all rental properties, and require landlords to pay for renters' energy utility usage costs if the rental property does not meet minimum energy efficiency standards.
22. That the NSW Government increase requirements on the type and accuracy of information on rental listing advertisements to include: an accurate floor plan, disability access and other accessibility information, energy efficiency details, a maintenance log of works requested and undertaken, as well as current and non-digitally altered images.

⁴ These recommendations are areas not covered in the consultation paper, however, it is our view that they are within the scope of the current review and should be incorporated into this tranche of changes to rental reforms.



Removing 'no grounds' terminations

The Greens strongly support putting an end to unfair, no grounds evictions in NSW.

The current no grounds eviction provisions, which allow landlords to evict tenants at the end of a lease or during a lease with no reason, cause enormous stress, insecurity and instability for renters and are contributing to the increasing cost of rent.

Many renters in NSW do not know where they will be living from year to year or, in some cases, from month to month. This instability creates a huge amount of stress, particularly for children who are forced to move schools, elderly people, or people who rely on local health and support services. It prevents renters from being able to put down their roots in their neighbourhoods and communities and contribute to our society.

The Greens have attempted to change the law to end unfair, no grounds evictions a number of times over the years, including introducing a bill to NSW Parliament in 2022 to prohibit no grounds evictions and moving amendments during the review of the Residential Tenancies Act in 2018.

We are generally supportive of the grounds proposed by the consultation paper, but would not support preparation of sale as a reasonable ground for eviction. We also recommend additional measures that ensure the grounds for eviction are fair and robust.

It is not a reasonable ground for eviction that a property is being prepared for sale. If a rental property is being sold to an investor the tenancy should continue. Where the property is sold to an owner occupier, either the existing ground of the property being sold with vacant possession can be used or the new owner can use the proposed ground that the owner will move into the property.

Finding a new home can be extraordinarily stressful, often requiring people to take time off work or out of their busy lives to attend multiple inspections. Renters should be given as much notice as possible to recognise the time and planning that it takes to secure a new home and to move.

The law currently requires that 90 days notice be given to end a tenancy on a periodic (rolling) lease. At a minimum, this 90 days should also be the required notice period for an eviction at the end of a fixed term lease.



Currently renters who are evicted during a periodic lease are able to give notice at any time before the termination date listed on the notice - this should also apply for renters on a fixed term lease to minimise the costs associated with moving and ensure that renters are not forced to pay double rent once they have found a new home.

Landlords must be required to provide sufficient evidence to support the grounds on which they are terminating a tenancy, and the evidence provided must prove that the reasons for eviction are necessary and genuine. The responsibility should sit with the landlord to prove that their reasons for eviction are valid, rather than on a renter to challenge.

We also support strong compliance and safeguards to protect against wrongful evictions - this should include a temporary ban on rental properties from being re-leased when a renter is evicted for any of the reasonable grounds for eviction discussed above.

Temporary bans are not sufficient on their own as a safeguard against wrongful evictions, and as such we recommend that when a wrongful eviction occurs penalties be enforced against landlords, and compensation be provided to renters to cover the cost of moving.

Oversight, penalties, and enforcement are critical given the significant profits that landlords and real estate agents stand to make from renters in the private rental market.

We encourage careful consideration be given to establishing a hardship fund to compensate renters who are forced to move through no fault of their own.

The soaring cost of rent means that renters move house significantly more often than owner-occupiers, and they often have no choice in the matter. Moving house is not just highly stressful but it is also hugely expensive.

The Tenants' Union estimates that evictions cost the average renter more than \$4,000 and that up to 30% of renters will face an eviction through no fault of their own.⁵ The risk of eviction, particularly into homelessness, is especially high for people who are experiencing personal crises or other stressors.

⁵ Eviction, Hardship, and the Housing Crisis, The Tenants' Union of NSW, 14 February 2022



If people are moving every six to 12 months, they are having to bear that cost in addition to all of the other costs associated with renting.

If a renter is evicted for a reason other than a breach of tenancy, compensation should be provided to recognise the significant costs of moving and difficulties associated with having to move away from one's community, services and local schools and health services.

Compensation could come in the form of a lump sum payment, or of an equivalent rent-free period.

Ending a lease, and forcing someone to move from their home at no fault of their own, should always be a last resort - a compensation fund would serve to disincentivise evictions and keep renters in their home and community.

In response to the specific questions asked in Section 3 of the consultation paper, we hold the following views:

- The NSW Government should act immediately to end unfair 'no grounds' evictions and require all landlords to give a valid, limited reason to end either a fixed term or periodic lease.
- The prescribed reasons ('grounds') under which a landlord can end a tenancy should be limited beyond the proposed new reasons articulated in the discussion paper:
 - Preparation for sale should not be a valid reason to terminate a lease.
 - Demolition and reconstruction of a property may be a valid reason for eviction, whereby the reconstruction is significant, would be undertaken over a significant timeframe, and all relevant approvals have been received. We echo concerns raised by the Tenants' Union that landlords being able to rely on repair and renovation as a ground for eviction, may allow landlords to leave a property to fall into disrepair.
 - Change of use of a property must be for a minimum of 6 months if being relied upon as a valid reason for eviction.
 - The definition for a "family" member should be limited to definitions similar to the Tasmanian or Victorian Residential Tenancies Act, and the landlord and/or immediate family member must be living in the property for a minimum of 12 months.
 - There are no further situations where a landlord should be able to end a lease.



- The Greens support the recommendation from the Tenants' Union of NSW that the minimum notice period for eviction is no less than 90 days in most grounds, and no less than 6 months for change of use and demolition.
- Landlords must be required to provide written evidence to prove the termination of the lease meets the prescribed reasons. The Greens support the documentation recommended by the Tenants' Union of NSW in their submission to the consultation paper.
 - An ABN and/or business registration license and/or council planning permit when reason for eviction is change of use;
 - Both a demolition permit and contract with demolisher stating date of demolition when reason for eviction is demolition;
 - A witnessed Statutory Declaration when a landlord or reason for eviction is a landlord or immediate family member is moving in;
 - A signed and dated contract of sale when reason for eviction is the sale of a property, and the new owner is moving in.
- We support a temporary ban on the property being rented out again being put in place to protect renters against any misuse of reasonable grounds for eviction. The Greens support the recommendations from the Tenants' Union on the proposed time frames of:
 - A 12 month temporary ban on re-letting when reason for eviction is change of use;
 - A 6 month temporary ban on re-letting when reason for eviction is demolition and/or reconstruction;
 - A 12 month temporary ban on re-letting when the reason for eviction is a landlord or immediate family member is moving in.
- Strong compliance and enforcement provisions are necessary to ensure landlords cannot sidestep the 'no grounds' eviction provisions, as such we support the introduction of penalties to be imposed on landlords, this should include compensation to the impacted tenants.
- A range of penalties, including compensation for the tenant, should be imposed on the landlord where there is a breach of 'no grounds' eviction provisions.
- It is critical that NSW Fair Trading is given additional resourcing to track breaches through data from the Bond Board, as well as complaints received.



Recommendations:

1. That the NSW Government act immediately to end unfair 'no grounds' evictions and require all landlords to give a valid, limited reason to end either a fixed term or periodic lease.
2. That the prescribed reasons ('grounds') under which a landlord can end a tenancy should be limited beyond the proposed new reasons articulated in the discussion paper. Preparation for sale should not be a valid reason to terminate a lease.
3. That a landlord be required to provide evidence to prove the termination of the lease meets the prescribed reasons, and that a range of penalties, including compensation for the tenant, be imposed on the landlord where there is a breach.



Allowing pets in rentals

Renters should have the same rights as property owners when it comes to owning pets. There should not be special laws that apply to renters, but rather existing strata and animal welfare laws should apply consistently to pet ownership.

The Greens moved amendments in the 2018 review of the Residential Tenancies Act to give renters the right to own a pet.

Australia has some of the highest rates of pet ownership in the world, and pet ownership is linked to significantly improved health and wellbeing outcomes. But current rental laws mean that many renters in NSW are denied this choice, or in choosing to keep a pet risk their housing security.

Renting in NSW is extraordinarily tough right now, with increased rent costs and low vacancy rates already making it difficult for people to find rental properties. But with very few rental properties listed as being pet-friendly, this difficulty is exacerbated for renters who do have pets or often face discrimination in their rental applications.

We also know from domestic and family violence services that people experiencing violence often delay leaving an unsafe situation because they are unable to find pet-friendly housing. In their submission to the 2022 Review into Keeping Pets in Rental Homes, Domestic Violence NSW noted that housing is often one of the most significant barriers to leaving a violent relationship, and for victim-survivors with pets, this choice has additional complexities.⁶

Renters are also often forced to give away their much-loved pets to animal shelters and adoption services if they can't find a pet-friendly rental, exacerbated by the frequency that renters are forced to move house.

We do not support the concept that renters need permission to have a pet, however, if this was to be required then landlords and real estate agents should be required to respond in a timely manner to a request for a pet. In the ACT, for example, landlords are given 14 days once a request has been received to respond and must apply to the Tribunal within this time if they are seeking to refuse the request for a pet. The timeframe suggested in the consultation paper of 21 days is too long.

⁶ Submission to Keeping Pets in Rental Homes, Domestic Violence NSW, November 2022



There should not be a list of valid reasons for a landlord to say no to a pet. Each request should be considered on its own merits, and landlords should not be allowed to refuse a pet on an ongoing basis.

Responsibility should sit with landlords to seek an order at the Tribunal if they wish to refuse a request for a pet, and animal welfare should be the primary consideration when the Tribunal is determining whether the request to refuse a pet is reasonable.

We also support calls from the Tenants' Union of NSW for further regulation around responsible pet ownership, welfare standards, and residential premises to be developed with animal welfare groups such as the RSPCA.

We do not support the notion that landlords should be able to place any additional conditions on keeping a pet.

Rental laws already require that any changes would require written notification and consent, and to be paid for by the renter, (eg. installing a cat flap). Renters also already pay a bond at the start of their tenancy to cover any potential damages, whether that damage is from a pet or human. Rental laws also already provide for recourse if landlords wish to pursue costs above the bond amount.

Renters should not be subject to additional rules that others in the community are not required to follow.

Rental properties are people's homes, and renters should be able to make simple choices to make the house they live in feel like home, including owning a pet.

In response to the specific questions asked in Section 4 of the consultation paper, we hold the following views:

- The NSW Government should urgently amend all relevant laws and regulations to enable renters to have the same rights as owner-occupiers when it comes to having pets.
- While we do not support a renter having to request approval from a landlord to keep a pet, if the Government does require this, then 14 days is a reasonable amount of time for a landlord to consider and respond to a renter's request to keep a pet.
- There should not be a prescribed list of reasons that a landlord can refuse a pet. Any reasons for refusing a pet should be limited to the existing laws, strata requirements and animal welfare protections also applicable to owner-occupiers.
- Landlords should not be allowed to refuse a pet on an ongoing basis.



- Landlords should be able to place any additional conditions on a lease for keeping a pet, renters should not be subject to additional rules that other pet owners in the community are not required to follow.

Recommendations:

4. That the NSW Government urgently amend all relevant laws and regulations to enable renters to have the same rights as owner-occupiers when it comes to having pets.
5. That any reasons for refusing a pet should be limited to the existing laws, strata requirements and animal welfare protections also applicable to owner-occupiers.



Renters' personal information

The current process to apply for a rental property in NSW can be deeply invasive of renters' privacy. There is no end to the kinds of questions that are being asked of renters, with reports of renters being asked for years of bank statements, police background checks, social media profile links or—as reported in one recent case—whether the applicants have prominent tattoos.⁷

Too often renters are also forced to provide this information to third parties in order to be considered for a rental property, despite the fact that third parties are not subject to the same privacy and data handling obligations as real estate agents.

Renters should not be required to hand over huge amounts of personal information with no guarantees around how their data will be protected in order to have their application to rent property considered. There must be limits on the information that can be collected during the rental application process.

Standard rental application

The Greens strongly support the introduction of a standard rental application form as a means of providing greater protection for renters during the application process and limiting the intrusive requests that can be made.

We note that the recent Parliamentary Inquiry into the government's Residential Tenancies Amendment (Rental Fairness) Bill recommended that the Government consider a standard rental application form for renters, a recommendation that has broad support from stakeholders and across the community.⁸

A standard rental application would go some way in reducing the discrimination that renters experience during the rental application process, by ensuring that landlords are not able to request any information about a renter that could be used to perpetuate any form of discrimination.

⁷ 'Wild west': Australia's would-be tenants asked about tattoos and social media as calls grow for regulation, The Guardian, 12 June 2023

⁸ Select Committee on the Residential Tenancies Amendment (Rental Fairness) Bill 2023 final report, June 2023



We also recommend ensuring that a standard rental application form be used to stop other forms of discrimination, including information such as whether a renter has a pet or receives income support.

Limiting the information that can be asked during the rental application process

There should be clear limits on the types of information and documents that can be asked for during the rental application.

The proposed approach to limit information collected to no more than a certain number of prescribed documents would address this, but we would also want to ensure flexibility for tenants who may not have ready access to prescribed documents. This includes newly arrived or temporary migrants, international students, Aboriginal and culturally and linguistically diverse communities, sex workers and other workers who are concerned about being discriminated against on the basis of their occupation.

Renters must have the choice as to which documents or information they will provide, and landlords must be restricted from specifying a preferred type of document or information or refusing to accept a type of document or information.

Protecting renters' privacy

Renters deserve much greater protections when it comes to their personal information and data. Restrictions on how renters' personal information can be used and disclosed must apply to all parties handling this information - not just real estate agents, but also landlords and third party technology platforms.

Renters should have confidence that any information collected about them will only be held for the period it is beneficial to the renter to do so, that it will be stored securely, and that there are strict restrictions that prohibit the on-selling of any data to third parties for marketing or advertising purposes. Companies should not be profiting from the collection of renters' personal data.

We support recommendations from the Tenants' Union of NSW on the proposed timeframes for data storage that:

- Landlords and agents should securely store the contact information for successful applicants, such as a phone number and email address, that is needed for ongoing communications, and that the tenant should be provided with copies of any information



held about them, and all non-contact information is destroyed within 2 months of a tenancy agreement being entered into.

- Landlords and agents should destroy the information and documentation provided by unsuccessful applicants once a lease agreement has been entered into, unless an unsuccessful applicant advises otherwise for a period of no more than 6 months or as directed.
- Third parties should destroy all information upon completion of a rental application, unless an unsuccessful applicant advises otherwise for a period of no more than 6 months or as directed.
- Renters should be given free, timely and readily available access to their personal information that is stored.

Reducing discrimination in the rental application process

While a standard application form would go some way in reducing discrimination during the rental application process, there are further steps that need to be taken to address the systemic discrimination that many renters face.

The recent Parliamentary Inquiry into the government's Residential Tenancies Amendment (Rental Fairness) Bill also heard from peak organisations about the profound effects that the rental crisis is having on renters who have a disability, renters from First Nations backgrounds, renters who are older, renters who are on lower incomes, renters at risk of homelessness, renters who are newly arrived migrants and renters who suffer other kinds of discrimination in society. They face ongoing issues of discrimination in the rental application process and during their tenancy.

It is our view that both the NSW Fair Trading and the Office of the Rental Commissioner have a role to play in increasing communication to tenants about their rights in relation to discrimination and also clearly setting out the responsibilities landlords and real estate agents have in relation to existing discrimination laws.

Automated decision-making

There is not enough transparency in automated decision making to ensure that it is serving the best interests of renters.



CHOICE have raised concerns that the technology is “a process that leaves people who rent at the mercy of automated decision-making over which they have no control” and gives rental agents and landlords more tools to discriminate amongst applicants.⁹

Renters are not given transparency about the weighting of decision-making factors, or even that automated decision-making is being used to assess their application.

The algorithm or weighting of any automated decision-making technology should be made publicly available to ensure full transparency about how recommendations or decisions are made. This responsibility must sit with all who are using this technology, including real estate agents, landlords and third parties, not just the technology platforms themselves.

Any information that can be used to unlawfully discriminate against a renter (a renter’s age, disability, gender identity, race, intersex status, sexual orientation, or marital status) should not be allowed to be used by computer programs for decision making.

We support recommendations from the Tenants' Union of NSW that the use of automated decision-making should be put on hold until they have been tested by an independent and expert entity, protections are in place to ensure equity and transparency in the process, and safeguards are implemented to ensure paper applications are accepted and considered equal to online applications.

In response to the specific questions asked in Section 5 of the consultation paper, we hold the following views:

- The NSW Government must act to put significant restrictions on the type, quantity and retention of personal information required from tenants in order to ease the burden on renters applying for properties, reduce risks of privacy breaches, as well as limit avenues for potential discrimination.
- The information proposed to be collected is broadly appropriate, but renters must have the choice as to which documents or information they will provide, and landlords must be restricted from specifying a preferred type of document or information or refusing to accept a type of document or information.

⁹ RentTech platforms: How your data is used against you, CHOICE, <https://www.choice.com.au/consumers-and-data/data-collection-and-use/how-your-data-is-used/articles/renttech-data-used-against-renters>



- Flexibility must also be built into the model to ensure that the rental application process is not so restrictive that some renters will find it difficult to produce the documents required quickly.
- A standard rental application form should be introduced as a means of providing greater protection for renters during the application process and limiting intrusive and unreasonable requests.
- A standard rental application form, alongside limits on the documentation that can be asked for in the rental application form, will go some way to reduce discrimination in the rental application process.
 - This should include prohibiting questions as to whether a renter has a pet or receives income support.
- Renters need laws to provide much greater protection regarding their personal information, restrictions, we support laws to strengthen renters privacy and how their personal information can be disclosed.
- Renters should have confidence that any information collected about them will only be only for the period it is beneficial to the renter, that it will be stored securely, and that there are strict restrictions that prohibit the onselling of any data to third parties for marketing or advertising purposes.
- Privacy laws regarding the use and disclosure of renters' personal information must apply to all parties holding this information - not just real estate agents, but also landlords and third party technology platforms.
- We support recommendations from the Tenants' Union of NSW on the proposed timeframes for data storage that:
 - Landlords and agents should securely store the contact information for successful applicants, and that the tenant should be provided with copies of any information held about them. All non-contact information is destroyed within 2 months of a tenancy agreement being entered into.
 - Landlords and agents should destroy the information and documentation provided by unsuccessful applicants once a lease agreement has been entered into, unless an unsuccessful applicant advises otherwise for a period of no more than 6 months or as directed.
 - Third parties should destroy all information upon completion of a rental application, unless an unsuccessful applicant advises otherwise for a period of no more than 6 months or as directed.
- Renters should be given free, timely and readily available access to their personal information that is stored.



- Landlords, agents and proptechs should be required to give renters access to the personal information that they hold and correct personal information that is incorrect.
- There is not enough transparency in automated decision making to ensure that it is serving the best interests of renters.
- The use of automated decision-making should be put on hold until tested by an independent and expert entity, protections are in place to ensure equity and transparency in the process, and safeguards are implemented to ensure paper applications are accepted and considered equal to online applications.

Recommendations:

6. That the NSW Government act to put significant restrictions on the type, quantity and retention of personal information required from tenants in order to ease the burden on renters applying for properties, reduce risks of privacy breaches, as well as limit avenues for potential discrimination.
7. That the NSW Government introduce a standard rental application form as a means of providing greater protection for renters during the application process and limiting intrusive and unreasonable requests.
8. That the NSW Government establish and resource a program within NSW Fair Trading or the Office of the Rental Commissioner, to educate and raise awareness about obligations and protections, as well as to receive and monitor complaints, related to discrimination.



Portable bonds scheme

The Greens support the introduction of a portable bond scheme as a simple and practical measure to ease the financial stress renters face when moving house regularly. By allowing renters to transfer bonds from one property to another, the scheme ensures that renters will not be forced to pay double bonds when moving.

Renters, who are bearing the brunt of the housing and cost-of-living crisis, will also welcome this shift.

A renter should have a minimum 30 days to top up the new bond that has been claimed by the previous landlord, with flexibility given to renters when they have to dispute a bond claim.

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

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

We support the scheme being available to all renters. While the scheme should not be compulsory, it should be universally accessible and made available for any renter who would like to make use of it.

Landlords should not have the option of knowing whether or not tenants are accessing this scheme, as it should not be a way to make decisions with preference given to renters that do not use the scheme. Landlords should only be informed that the bond has been paid, rather than how it has been paid or put in place.

The Greens also encourage consideration be given to requiring landlords to put forward a bond when they commence a tenancy agreement to cover basic maintenance and repairs.

As it stands, there is a significant power imbalance between renters and their landlords - exacerbated by the current housing crisis. Many renters have little to no information about their landlord, have little means available to them to challenge excessive rent increases or unresolved maintenance requests, and often fear eviction if they speak up to enforce their rights. Renters



routinely report to us poor communication, unfair leasing practices, and a general lack of respect.

Requiring landlords to put forward a bond would help shift the power imbalance, provide renters with a means of recourse if ongoing maintenance issues are not being resolved, and the interest on the bond could be used to create a hardship fund for renters and landlords facing extenuating circumstances.

In response to the specific questions asked in Section 6 of the consultation paper, we hold the following views:

- The NSW Government should establish a portable bond scheme that is accessible to all tenants.
- A renter should have at a minimum 30 days to top up the new bond that has been claimed by the previous landlord, with flexibility given to renters when they have to dispute a bond claim.
- If a renter is not able to pay the difference on time, the new landlord's bond should be guaranteed through another means, with the money to be recovered from the renter.
 - The renter should not be barred from the portable bond scheme in future, and landlords should not be able to end the lease.
 - Any measures put in place to require the tenant to top up the second bond should not risk the tenant being evicted from their new home.
- The scheme should be universally available to all renters who choose to use it.
- Renters should have the choice as to whether to use the portable bonds scheme, landlords should be advised only that the bond has been paid, without disclosing whether or not the tenant is using the portable bond scheme.

Recommendations:

9. That the NSW Government establish a portable bond scheme that is accessible to all tenants.
10. That landlords be advised only that the bond has been paid, without disclosing whether or not the tenant is using the portable bond scheme.



11. That any measures put in place to require the tenant to top up the second bond should not risk the tenant being evicted from their new home.



Excessive rent increases

With record rent increases, rental affordability is at its worst in NSW.

Our office routinely hears from renters who have been forced into desperate financial situations due to their rent being raised, too many renters are living with significant financial and housing stress, and have very little protections from rent increases. Media reports of the personal impact of this crisis on so many throughout NSW cannot be ignored.

The Greens support more open and transparent data when it comes to excessive rent increases, but action cannot be limited to a data or information sharing exercise.

Renters almost always know when their rent increase is excessive, what they need is clear limits on what a rent increase can be and simply ensuring a tenant knows whether or not a rent increase is 'excessive' doesn't help a tenant who fears their lease will be terminated if they raise concerns or challenge this increase.

We support additional measures to track rent increases and ensure this information is made publicly available to renters.

There is currently a significant gap in information about rent increases - with information regarding rental costs and movements based on data rental bond data held by NSW Fair Trading and therefore only available in relation to new leases, and not existing leases.

It should be a requirement for landlords and/or their real estate agents to report to NSW Fair Trading when they are increasing the rent on both new and existing leases, including providing evidence and a justification for the rent increase.

This information should then be made publicly available to all renters through NSW Fair Trading or another equivalent online system.

The NSW Fair Trading ending a tenancy survey should also explicitly ask renters if they received a rent increase, and if so the amount of the rent increase and whether it was a reason for ending the tenancy,.

Any action on excessive rent increases needs to include longer-term rent controls to ensure we are bringing down the record-high rent costs and actually making renting affordable.



In response to the specific questions asked in Section 7 of the consultation paper, we hold the following views:

- The NSW Government must act to prevent ‘excessive’ rent increases by requiring landlords to provide evidence and justification for rent increases, simply ensuring a tenant knows whether or not a rent increase is ‘excessive’ doesn’t help a tenant who fears their lease will be terminated if they raise concerns or challenge this increase.
- The NSW Government should be collecting, tracking, and publicly releasing data on the amount and frequency of rent increases.
- This information could be collected by:
 - Making it a requirement for landlords and/or their real estate agents to report to NSW Fair Trading when they are increasing the rent on both new and existing leases, including providing a reason for the rent increase.
 - The NSW Fair Trading ending a tenancy survey should explicitly ask renters if they received a rent increase, and if so the amount of the rent increase and whether it was a reason for ending the tenancy.

Recommendations:

12. That the NSW Government act to prevent ‘excessive’ rent increases by requiring landlords to provide evidence and justification for rent increases, simply ensuring a tenant knows whether or not a rent increase is ‘excessive’ doesn’t help a tenant who fears their lease will be terminated if they raise concerns or challenge this increase.



Other changes to improve rental affordability

The Greens welcome the reforms considered in this consultation paper, but recognise that these reforms and this consultation will take time and there is an immediate need to relieve renters from ongoing rental increases.

Renters need a two year freeze on rent increases while these reforms are undertaken and implemented, and to stop the cost of rent from continuing to skyrocket.

Data from the Federal Parliamentary Library indicates that if a national rent freeze had been coordinated and implemented for two years from July 2022 renters across Australia could have saved over \$8 billion collectively or \$3688 per rental household.

For the average rental household that's \$3688 in savings that could be put towards getting food on the table, a desperately needed trip to the dentist, or paying electricity bills for two years.

The Greens introduced the *Residential Tenancies Amendment (Rent Freeze) Bill 2023* to NSW Parliament that would freeze rents for two years to press pause on unchecked rent increases, relieve renters from the stress of a rent hike, give wages and incomes a chance to catch up on rents to bring down the cost of rent in real terms.

With no limit on the scale of rental increases, rents over the past 12 months have surged by 20% in Sydney according to the Tenants' Union of NSW's rent tracker data, and rental unaffordability and record low vacancy rates are also being felt in regional areas.

We support the recommendation that protections should be implemented to prevent landlords from increasing the rent when changing between lease types - as such we recommend that limits to rent increases apply not to the lease, but rather to the property.

The Greens want to see hard limits imposed on the amount and frequency of rent increases - without which the cost of rent will continue to increase and people will be pushed out of their homes and communities, with more and more people at risk of homelessness.

We need to regulate the rental market to protect renters in the same way we regulate and set maximum price increases for a range of essentials like water, energy, public transport and local government rates.

Limiting the amount by which a rent increase can occur is critical to ensure that landlords and real estate agents do not use excessive rent increases as a means of evicting tenants if and



when no grounds evictions are prohibited. It is our view that rent increases should be limited to no more than 2%, every 24 months - and that this should be linked to the property, not the tenancy, to disincentive unnecessary evictions.

Ongoing rent controls are needed to provide relief to the many renters in housing stress and ensure that renting can be genuinely affordable.

Renters currently have very limited rights and very limited options regarding rent increases and housing security. Renters must have stronger protection from greedy landlords and agents and massive rent hikes.

The ACT has a form of rent control which stops excessive rent increases and requires the landlord to make a case for any increases above the prescribed rate.

We want to see much stronger rights for renters and legislation to ensure that rent increases are regulated, especially outside fixed-term lease periods (during periodic tenancies or between fixed-term leases).

An inquiry into rent controls and rent setting measures is critical given the ongoing contested debates occurring in the mainstream media about rent freezes, that continue to unfortunately rely on outdated studies, misused data, or the incorrect representation of outcomes from approaches in other jurisdictions.

Alongside ongoing rent controls, consideration should be given to reforms that would prevent renters from experiencing housing stress (whereby people are spending more than 30% of their income on rent), either in the form of rental subsidies or other measures for anyone on lower incomes or income support, people with a disability, older people or students.

Rentals in NSW are at unprecedented levels of unaffordability. More and more people are experiencing severe rental stress, and there is a dire shortage of affordable rentals for people on lower incomes.

The increasing cost of rent, and unprecedented cost of living pressures, are having a profound impact on renters on a lower income. Households on low incomes or living below the poverty line in NSW face major struggles with housing affordability, and data from the NSW Council of Social Services estimates that almost half (49%) of people living below the poverty line are living in the private rental market.¹⁰

¹⁰ NSW Council of Social Service, Mapping Economic Disadvantage in NSW, April 2023



It is the responsibility of the NSW Government to ensure people are not living in housing stress and that means taking the necessary legislative and policy decisions to ensure that no one in NSW is forced to make a choice between paying more than 30% of their income on housing or becoming homeless.

In response to the specific questions asked in Section 8 of the consultation paper, we hold the following views:

- We support the recommendation that protections should be implemented to prevent landlords from increasing the rent when changing between lease types. Limits to rent increases should apply to the property, not the tenancy.
- Rent increases should be restricted to no more than 2%, every 24 months on all lease types and all rental properties.

Recommendations:

13. That the NSW Government implement a two-year rent freeze set at 1 July 2023 rents, to alleviate immediate financial pressures on renters while the other reform measures are being implemented.
14. That all rents in NSW be capped so increases can be no more than 2% every 24 months, and apply to the property, not the tenancy.
15. That an inquiry be established to examine and report on rent controls and rent setting measures that would address the increasing unaffordability of rent, rental stress, and housing insecurity, in the context of stagnant wage growth and the cost of living crisis.



Other changes to make rental laws better

Our recommendations in response to the three areas included in Section 9 of the consultation paper are set out below.

Embedded Networks

The Greens support greater transparency for renters during the rental application process. Landlords and agents should be required to tell renters that the property uses an embedded network in rental advertisements, as well as during rental inspections and in the tenancy application, to ensure they have this information before applying for a property.

This information should be provided to renters in plain language, that clearly articulates what the embedded networks mean for them including expected costs and pricing arrangements, what consumer protections are or aren't available to them, and how they can find out further information.

Recommendation:

16. That the NSW Government require landlords and real estate agents include information, including expected costs and consumer protection details, for properties that use embedded networks in rental advertisements, inspections and as part of the application process.

Free ways to pay rent

The law needs to be strengthened so that renters have an easy, free, electronic way to pay rent. Money orders and cheques are an incredibly outdated and antiquated form of payment.

Specific concerns have been raised with our office about real estate agents pushing renters to use third party rental payment sites that have a predatory fee structure - with ongoing mandatory fees that renters are pushed into paying - while giving no other options to pay their rent freely and easily.



The law should require a landlord or real estate agent to also offer an electronic way to pay rent that is free to use, through direct debit or BPAY.

Recommendation:

17. That the NSW Government legislate to ensure that all renters have access to one free, easily accessible and electronic way to pay rent.

Strata schemes

The Greens support greater transparency for renters during the rental application process.

Given the added complexity that strata schemes present when it comes to resolving building and maintenance issues, landlords and agents should be required to provide renters with clear information about any strata by-laws or ongoing maintenance issues during the rental advertisements, inspection, and application process.

Recommendation:

18. That the NSW Government act to ensure landlords and real estate agents provide renters with clear, comprehensive information relating to strata rules and ongoing maintenance issues during the advertisement, inspection, and application process.



Additional recommendations

These recommendations are areas not directly covered in the consultation paper, however, it is our view that they are within the scope of the current review and are critical elements that should be incorporated into this tranche of rental reforms.

No-one evicted into homelessness

The NSW Government has a responsibility to work to end homelessness, not add to the crisis. In line with this, it is our view that no one should be evicted into homelessness as a result of being unable to find an alternative property to live in or being unable to afford to remain in their existing home.

The Residential Tenancies Act must be strengthened to ensure no one who receives an eviction notice, or rent increase they can't afford, is evicted into homelessness.

Anyone who receives a notice of eviction or a rent increase that they can't afford forcing them to relocate, should not be evicted unless they have somewhere to go to. If they can't find somewhere they can afford to live, they should not be evicted.

Recommendation:

19. That the NSW Government act to reduce homelessness by legislating to ensure that no one renting a property can be evicted into homelessness.

Prohibit rent bidding

The recent Parliamentary Inquiry into the Residential Tenancies Act (Rental Fairness) Bill 2023 heard overwhelmingly from tenant advocates, peak organisations, and the sector that the practice of rent bidding should be prohibited. In a joint letter to the inquiry, 19 key tenant and homelessness advocacy organisations recommended prohibiting landlords, real estate agents, and potential tenants from offering, soliciting, or accepting a higher rental rate than the originally advertised rental price.¹¹

¹¹ Submission to Legislative Assembly Select Committee on the Residential Tenancies Amendment (Rental Fairness) Bill 2023, Tenants' Union of NSW, May 2023



Renters are experiencing unprecedented rent hikes at the moment and are under enormous financial pressure. Rent bidding is adding to the rental crisis and driving up the cost of rents, and renters' desperation to secure properties is being preyed on as they offer higher and higher prices.

The impacts of rent bidding are being particularly felt by renters on lower incomes and those at risk of homelessness.

The Greens hold the view that all forms of rent bidding should be prohibited and new laws that ensure rental properties cannot be leased out at a higher rate than the advertised price are a critical affordability, transparency, and fairness measure.

Recommendation:

20. That the NSW Government legislate to end rent bidding and ensure that all rental properties have an advertised price and prohibit a higher price being paid.

Energy efficiency and cheaper power bills for renters

There are currently no minimum energy efficiency standards for rental homes, which means that renters are forced to make the choice between freezing in their homes during winter, sweltering during summer, or putting up with extraordinarily expensive power bills. 66% of renters have reported experiencing difficulty keeping a comfortable temperature in their rental home.¹²

There are currently no incentives for landlords to implement basic measures that would make rental homes more energy efficient, and renters are ultimately paying the price.

We recommend taking action to improve rental affordability and make renters' power bills cheaper by implementing minimum energy efficiency standards on all rental properties and expanding renters access to solar power by offering concessions to landlords that install solar panels and batteries.

¹² Essential poll shows widespread support for minimum standards for rentals, August 2022, <https://www.healthyhomes.org.au/news/essential-poll-shows-widespread-support-for-minimum-standards-for-rentals>



More than 75 community, faith, environment, housing, industry, and social sector organisations from across Australia, including the Australian Council for Social Services, CHOICE, Shelter NSW, the Tenants' Union of NSW, the Sydney Alliance, and People with Disability Australia have also called for minimum standards for rental properties to safeguard the health of renters and protect them from the impacts of climate change.¹³

Landlords should also be required to pay for renters' electricity usage if their rental property does not meet minimum energy efficiency standards. This is a measure that is currently in place for renters' water usage, where a landlord can only ask a tenant to pay water usage charges if the property meets the 'water efficiency' standards.

Recommendation:

21. That the NSW Government implement requirements for minimum energy efficiency standards on all rental properties, and require landlords to pay for renters' energy utility usage costs if the rental property does not meet minimum energy efficiency standards.

More transparency during the rental application process

We welcome that the NSW Government has indicated a commitment to ensure more fair and transparent rental laws to protect tenants.

We note that the recently passed Residential Tenancies Amendment (Rental Fairness) Bill introduced some measures around this, including prohibiting real estate agents, landlords and third parties from soliciting offers of rent that are higher than the advertised price - and that there are further measures in this consultation paper that would ensure greater transparency for renters during the rental application process, such as including strata by-laws and information regarding embedded networks in advertised listings.

Given this commitment, there are a number of further recommendations that we make to strengthen transparency during the rental application process.

¹³ 75 organisations urge state/territory governments to adopt minimum standards to keep renters healthy and safe, August 2021, <https://www.healthyhomes.org.au/news/open-letter-minimum-standards>



There is currently no requirement for advertised rental listings to include **accessibility information**. Submissions from both Disability Advocacy NSW and People with a Disability Australia to the Inquiry into the Residential Tenancies Amendment (Rental Fairness) Bill noted that there is a dire shortage of affordable and accessible housing and that people with a disability are among the most disadvantaged in the rental market.¹⁴

The lack of information about access on rental listings means there is a significant burden on individuals who are forced to follow up directly with real estate agents, or waste their time travelling and turning up to inspections only to discover on arrival that the rental property would not be suitable for their needs.

It is our view that it should be a requirement for rental listings to include accessibility information, to ensure that people with a disability or specific accessibility needs have the information that they need to make a decision as to whether a rental property will be appropriate for their needs.

All rental listings should also be required to include a **to-scale floor plan of the property** layout to ensure that prospective tenants are able to quickly determine whether a rental property is suitable for them. We note that in almost all real estate listings for sale, floor plans are included, so this requirement should not be difficult and will save time for both prospective tenants and real estate agents. Similarly there are very serious concerns about misleading **photos** and images being used in advertisements.

Renters routinely report feeling frustrated by deceptive or misleading rental advertisements - with out-of-date photos being reused over a number of years, clever camera angles relied upon, furniture photoshopped into pictures that misrepresent the reality of the rental listing, and no floor plans.

Maintenance is a massive issue for so many renters - and being able to access a **maintenance log** would go some way to improving transparency and accountability when it comes to the habitability of a rental property.

While our current rental laws have provisions in place that require landlords to properly maintain rental properties, in reality the system allows landlords to ignore their responsibilities in many cases.

¹⁴ Submissions to Inquiry into Legislative Assembly Select Committee on the Residential Tenancies Amendment (Rental Fairness) Bill 2023, Disability Advocacy NSW and People with Disability Australia, May 2023



Tenants have real concerns that if they complain about outstanding maintenance or demand essential repairs, they may face a large rent increase or be asked to leave their rental property as soon as their current lease expires.

Removing ‘no grounds’ evictions and regulating rent increases will mitigate some of the worst problems tenants face in terms of outstanding maintenance issues, but further reform is required to ensure that renters are not living in substandard housing.

There are currently no requirements in the Act regarding the timeliness of repairs, beyond that urgent repairs need to be completed in a “reasonable” time. What is considered “reasonable” is not defined, and there is no obligation placed on landlords to complete general repairs in a timely manner.

The Greens support strengthening provisions in the Residential Tenancies Act that outline landlord responsibilities around maintenance and would like to see the inclusion of a requirement to complete all reasonable maintenance requests within a specified time frame.

We also recommend that landlords and real estate agents be required to maintain a log of maintenance requests made and maintenance undertaken. Whenever a rental property is leased, prospective tenants should be given access to the maintenance history of the property for the past two years.

Recommendation:

22. That the NSW Government increase requirements on the type and accuracy of information on rental listing advertisements to include: an accurate floor plan, disability access and other accessibility information, energy efficiency details, a maintenance log of works requested and undertaken, as well as current and non-digitally altered images