

22 August 2023

Improving NSW rental laws consultation paper
NSW Fair Trading
NSW Department of Customer Service
4 Parramatta Square
12 Darcy Street
Parramatta NSW 2150

Dear Sir/Madam

Support to improve NSW rental laws

The City of Sydney (the City) strongly supports the NSW Government's review to improve NSW rental laws. We also welcome the appointment of a new Rental Commissioner to lead and implement key commitments to make renting in NSW more affordable, fairer, and secure.

With the rental market in NSW and in particular Sydney the toughest it has been in decades, the City recognises the importance of the proposed changes to address renting challenges faced by many in our community. The proposed improvements by the NSW Government are essential to ensure more equitable, affordable, and secure outcomes are delivered for both renters and landlords.

However, careful consideration is required to ensure that all renters have the agency, tools and support required to benefit from the proposed changes. Further research and engagement with key peak bodies such as the Tenants' Union of NSW, Shelter NSW, Homelessness NSW, YFoundations, Domestic Violence NSW, and the Community Housing Industry Association NSW is crucial to continue to unpack and identify how the rental law changes can best support everyone. Aboriginal and Torres Strait Islander people, younger and older people, people on low incomes, international students, new immigrants, creative workers, and people in social, affordable, and boarding housing are priority communities to specifically consider and engage with as part of this review.

Rental stress and the City of Sydney's strategic context

The City of Sydney has the highest number of households that rent (51 per cent) when compared to all other local government areas in NSW¹. Median rents for a unit in the City of Sydney increased by over 25% over the last financial year (2022-2023), that is an increase of \$182 per week, bringing the median rent in the City of Sydney from \$728 per week to \$910 per week². In addition, the recently published *Brutal Reality – The Human*

¹ <https://profile.id.com.au/sydney/tenure>

² <https://homelessnessnsw.org.au/data/housing-and-homelessness-dashboard/>

*Cost of Australia's Housing Crisis Report*³ noted that four in five (82 per cent) renters surveyed across Australia are in rental stress.

The City seeks to promote and support an inclusive and equitable society, in line with our Community Strategic Plan – *Sustainable Sydney 2030 to 2050 Continuing the Vision* and our *City for All – Social Sustainability Policy and Action Plan 2018-2028*. The City is committed to supporting renters by advocating and collaborating to deliver improved housing choices and conditions, including long term rental tenancy options.

The City's *Housing for All: City of Sydney Local Housing Strategy 2020* aims to support housing diversity and choice in the local area, including advocating for and supporting renters. This Strategy aligns strongly with the proposed recommendations by the NSW Government on the need for rental reform to address renter uncertainty. In particular, the Strategy states the need to consider permitting longer leases, reform of 'no-grounds' evictions, limiting rental increases and review, and better renter-owner mediation processes.

The City takes direct action to increase the supply of affordable rental housing available for lower income households. We have set a target of 7.5 per cent of all private dwelling stock to be affordable rental housing. We have collected \$377.8 million in levies, provided \$24.2 million in discount land and almost \$10 million in grants resulting in over 1,400 built affordable rental dwellings and an additional 1,300 affordable rental dwellings in the pipeline.

In addition, the City's *draft Resilience Strategy 2023-2028* identifies renters as a priority community who may require additional support during times of stress or emergency. This Strategy aims to advocate for safe, healthy, appropriate, climate-proofed crises, social, affordable, and rental housing. As part of the consultation for this Strategy, people who rent within our community also told us that they would like options to adapt their homes to deal with the impacts of climate change.

City of Sydney feedback on key recommendations

The City provides the following feedback to the NSW Government recommendations on improving rental laws in NSW.

Recommendation 1: Removing 'no-grounds' terminations.

The City supports the NSW Government's commitment to ending 'no grounds' terminations, including increasing notice to 90 days for fixed term leases.

Renters need homes that are stable and secure and deserve a valid reason for ending a tenancy. The requirement for a landlord to give a reason should apply to both periodic leases as well as fixed term leases. The most appropriate model should be informed with further guidance from the Tenants' Union of NSW as part of this consultation process.

The City also supports the need for landlords to provide evidence to a renter when a landlord ends a tenancy for a particular reason. The City would encourage the NSW Government to consider implementing similar types of evidence required in Queensland and Victoria such as a contract with a tradesperson demonstrating that the dwelling will be undergoing repairs or renovation or ensuring that the property is not rented out for six months after the tenancy has ended.

³ <https://everybodyshome.com.au/resources/brutal-reality/>

Recommendation 2: A new model for renters to keep pets.

The City supports the NSW Government's proposal to change tenancy laws to make it easier for renters to keep pets.

The City has a history of advocacy for changes to laws that have restricted pets through 'blanket bans' in strata and pets in rental properties. The City recognises the significant benefits of pets for individuals, households and communities, including companionship, well-being, physical and mental health. People experiencing domestic and family violence are at greater risk of both harm and housing instability when owning pets. A recent report from Domestic Violence NSW indicates individuals may remain in unsafe and precarious living situations to keep their pets in the instance of domestic violence⁴.

The City supports responsible pet ownership and the highest concern for animal welfare through our Companion Animals Policy. Domestic Violence NSW cites pets being killed or injured during incidents of domestic and family violence⁵. In addition, pet relinquishment (surrendering) has been shown to spike at times of housing crisis. By making it easier for people to have pets in rental homes, animal welfare outcomes could be improved, and the demand on animal welfare services offering domestic violence support programs, including the City's Pets in Needs Program, could be reduced.

The proposal for a standard pet form will provide a consistent way for renters to notify a landlord that they wish to keep a pet. Although, a 21-day period seems reasonable for an existing renter, the agent or landlord should confirm they have received the application, to avoid any possible confusion about a default approval if no objection is received within 21 days.

Further clarity and consideration are required for renters who already have pets and how they seek approval from a future landlord before they sign a lease. The proposal suggests that renters will only get a pet once they have the landlord's permission. We recommend the pet form is used only once someone is a preferred applicant, to ensure it does not become a tool for discriminating against pet owners. We also suggest a quicker response time for this scenario, for example, 5 business days, which is in keeping with the timeframes associated with rental tenancy application processes. Limiting the amount of personal information provided during the application process will promote a fairer process - more likely to make it easier for people to have pets, and less likely to result in discrimination for pet owners.

The City also supports clearly listing specific reasons to refuse a pet within the *Residential Tenancies Act 2010* or Regulation. This will provide clarity and minimise disputes between the landlord and renter. The City recommends the NSW Government consider the benefits and challenges of approaches to refuse renters to have a pet in other jurisdictions, including Victoria, the ACT and the Northern Territory. The reasons currently included in Appendix A would require further consultation with key peak bodies and the community. It will be important to ensure this process, including the Tribunal, makes it easier for people to keep pets (and doesn't have unintended outcomes through subjective measures and broad interpretation of reasons).

The City is concerned that the current proposal allows landlords to set excessive conditions on the keeping of pets, such as where they are kept and allows landlords to deny a tenant having a pet if they think the damage caused would be too expensive. The current approach leaves too much discretion with landlords to reject applications on the basis of subjective assessments of potential costs of potential damage caused by pets.

⁴ Stone et al (2021)

⁵ Animals and people experiencing domestic and family violence, Domestic Violence NSW, 2021

The City recommends that the NSW Government implement an approach similar to that in Victoria⁶. In Victoria renters have legal duties and responsibilities including taking care to avoid damaging the property, keeping the property reasonably clean and not causing a nuisance or interfering with the reasonable peace, comfort or privacy of neighbours.

If the renter does not meet their duties, the landlord can give them a Notice of Breach of these duties, which tells the renter to fix the breach or pay for any damage, and states that the renter must not breach the same duty again. This applies to damage caused by a pet.

If the renter does not comply with this notice, the landlord can make an application to the tribunal who will make a decision about the damage caused by a pet, taking into account fair wear and tear the age and condition of the damaged item(s).

The City recommends that any exclusions for pets made by a Tribunal should be included in advertisements for the property to ensure potential applicants are aware of these conditions prior to applying. In addition, the NSW Government will need to consider how renters can provide information that demonstrates how their pet complies with the guidelines.

The NSW Government may wish to undertake comprehensive training and information sessions for relevant stakeholders (such as landlords and agents) about how to implement any new processes and provide necessary resources to support the transition to any new arrangements.

Recommendation 3: Making it easier to transfer rental bonds from one property to another.

The City supports the NSW Government's proposed portable rental bond scheme to allow a renter to transfer their bond from an old property to a new property, before the bond from the old property has been repaid.

The transfer of rental bonds will provide a fairer and more accessible system that will reduce financial strain and cost of living pressures on renters when moving between properties. This is particularly important for renters on low incomes where additional costs cannot be easily absorbed for a period.

The City supports the proposed design of the new portable bond scheme and a consistent approach to implementation. This includes ensuring the scheme is compulsory for all renters. A compulsory scheme should be designed to be inclusive and accessible for everyone and not allow landlords to "pick and choose" renters based on those who use the scheme.

If required, we would encourage the NSW Government to consider a two-to-four-week timeframe for renters to top up a new bond to ensure this additional money could align with an individual's work salary payment or government support payment. In terms of consequences, if a renter does not top up the second bond, the City would encourage the NSW Government to engage directly with the Tenants' Union of NSW to understand the impacts this may have on renters.

⁶ <https://www.consumer.vic.gov.au/housing/renting/repairs-alterations-safety-and-pets/pets>

Recommendation 4: Information to help renters know when a rent increase is excessive.

The City supports providing timely and accurate information to renters so they can make informed decisions and be able to exercise their rights, particularly when faced with a rent rise that is excessive.

The City notes that the *Residential Tenancies Act 2010* currently outlaws excessive rent rises, however there is little guidance for renters on what is excessive. The onus to demonstrate if a rent rise is excessive is often on the renter. This current situation is encouraging and supporting extreme rent rises. In the ACT, excessive rent rises are defined as more than 110 per cent of the consumer price index for rent in Canberra. A landlord or agent can request more; however, the onus is on them to argue the case that it is not excessive in the Tribunal⁷. This is something that could be considered in NSW. However further research is required to better understand whether rental caps would be appropriate in NSW, and consider whether this could result in the withdrawal of rental stock from the rental market.

In addition, providing timely and accurate information to renters is important because one of the ways a renter can dispute a rent increase is by applying to the Tribunal for a hearing if they consider an increase to be excessive. Ensuring that renters have easily available data that is Government sourced and managed is important for transparency and fairness. A centralised and consistent data source that is publicly available may also positively impact the number of disputes that end up at the Tribunal.

The City also supports the proposed initiative to require landlords or their agents to report rent increases to the NSW Government using an online system (e.g. Rental Bonds Online). This would be a good starting point to allow renters to access data in rent increases and to provide Government with longitudinal rental increase data to inform required policy and system changes.

Recommendation 5: Other changes to make rental laws better.

The City also supports a number of additional changes to make rental laws better in NSW.

Telling renters about the use of embedded networks – the City supports the proposed update to the *Residential Tenancies Act 2010* to require landlords or agents to tell renters about all embedded networks that a rental property may use, including within the advertisement for the rental property and giving out a standard information sheet to enquirers.

Increased information for renters moving into strata schemes – the City supports the need for renters to be specifically told about moving restrictions and rules before they sign an agreement. This will assist renters to safely move in and ensure that renters are aware of any specific by-laws a building may have and be able to move in accordingly.

Clarifying the limits on rent increases – the City supports changing the law to prohibit rent being increased twice in 12 months if a renter has changed their agreement type from a periodic to a fixed term agreement. This change needs to occur alongside ending no ground evictions. These two changes combined could contribute to slowing down extreme increases in rent, as increases will be once every 12 months, and renters can't

⁷ <https://www.acat.act.gov.au/case-types/rental-disputes/rent-increases>

be evicted if the landlord plans to continue renting the property. As a result, this will provide renters more certainty and security for a 12-month period.

Privacy, use of renters' personal information and references – the City supports the proposed new model to protect renters' personal information to reduce the risk of personal information being misused. As noted by the NSW Government, priority groups, such as people with children, older people, Aboriginal and Torres Strait Islander people, or people from certain cultural backgrounds may find it harder than others to be approved for a rental property.

Reducing and clarifying the information that applicants can be asked to submit could also result in reduced discrimination for rental applicants. This may include a prescribed tenancy application form outlining the reasonably required information a renter needs to submit as well as the types of information that is not allowed to be collected by a landlord or agent. This could also be considered in relation to the use of the pet form in the application process and how this information may be used. In addition, further investigation on ways to support renters who may find it difficult to submit references as part of a rental application is required. This may include young people, international students, migrants, or people fleeing domestic violence where it may be their first rental application.

The City also supports changes to allow renter's the right to view and correct their personal information, including requiring the *Residential Tenancies Act 2010* to respond to applicants' requests to access their personal information within 30 days and take reasonable steps to correct any errors in the applicant's information that the applicant makes the agent or landlord aware of within 30 days.

Minimum energy performance standards for rental properties – the City supports and will continue to advocate for NSW and Federal governments to enact minimum energy performance standards for existing rental properties, alongside a nationally consistent rating tool for home energy performance with mandatory disclosure at the point of sale or lease (including for apartments). The City advocates for the NSW and Federal governments to develop tailored incentives for landlords to upgrade their properties to rectify this issue while stimulating the local economy, as well as reforms that protect renters' rights. All people should be able to live in comfortable housing that protects them from heatwaves and other extreme weather events that are becoming more intense and more frequent because of climate change. This is especially important if people are required to spend more time at home. Many private market and social housing renters live in homes with low levels of energy efficiency and thermal comfort, which can lead to higher utility bills. They have limited capacity to alter the performance of their dwellings, unlike people who own their homes.

All people should be able to live in comfortable housing that protects them from heatwaves and other extreme weather events that are becoming more intense and more frequent because of climate change. This is especially important if people are required to spend more time at home. The impacts of climate change disproportionately effect people already experiencing vulnerability such as those on low incomes or who are older, and these impacts are compounded with other climate-specific vulnerabilities such as being a renter. The City also advocates for the NSW and Federal governments to ensure that renters are supported to and are able to adapt to the changing climate, especially against hotter days for longer periods of time. Governments and cities globally are tackling these impacts through policy. New York City, Washington DC, and Toronto both already have minimum internal temperature requirements on rental accommodation and are now working towards a maximum temperature requirement. Landlords in New York City must also provide a method of internal cooling such as air conditioning, ceiling

fans or the ability to open windows and proof is required through landlord registration and retrofit/building development applications. Policies such as this are a good first step in protecting renters from the impacts of climate change allowing for more embedded change such as energy efficiency measures.

We thank the NSW Government for your consideration of these important issues for renters. The proposed changes are essential to foster a more balanced and fair rental market. In addition, we note that the Tenants' Union of NSW has undertaken significant advocacy for legislative reform to rental laws in NSW and urge the NSW Government to consider their recommendations and feedback as part of this process.

Yours sincerely,

Monica Barone
Chief Executive Officer

Resolution of Council

21 August 2023

Item 3.2

Strengthening Renters Rights and Limiting Rent Increases

Minute by the Lord Mayor

To Council:

We are in the midst of a housing crisis, which is making renting in Sydney increasingly unaffordable. The problem is particularly acute in the City of Sydney, where more than half of people living in the City are renters.

Over the last financial year, median rents for units in our local area went up by a staggering 25 per cent, that is an increase of \$182 per week, bringing the median rent for a unit in the City of Sydney from \$728 per week to \$910 per week. Haymarket and Zetland saw the highest annual increase in rent across suburbs nationally, with rent increasing by 30 per cent in the past year.

These substantial increases are one of the largest contributors to rising inflation and the current cost-of-living crisis, and are having devastating impacts on people and the efficient functioning of our city. Essential workers like paramedics, teachers and social workers have been priced out of living in the city. Young people and students, including from overseas, that are working in retail and hospitality can no longer live close to the city centre and are at increasing risk of homelessness.

Urgent action needed by State and Federal Governments

Housing is primarily the responsibility of the NSW Government. However, the City uses every lever available to increase the supply of means-tested and permanent affordable rental housing for lower income households in the Local Government Area.

To June 2022, the City has contributed to 2,759 Affordable Housing dwellings, either built or in the pipeline. This includes:

- 1,376 dwellings from \$378 million in levies (from sites in Pyrmont, Ultimo, Green Square and the Southern Employment Lands);
- 228 dwellings from \$24 million in subsidised City-owned land sales (on sites in Zetland, Redfern, Alexandria and Surry Hills);
- 483 dwellings from \$10 million in City grants to not-for-profit housing providers from our Affordable and Diverse Housing Fund (for projects in Darlinghurst, Chippendale, and Surry Hills); and
- 672 dwellings through Voluntary Planning Agreements (projects in Glebe and Rosebery), our planning controls (Redfern and Waterloo) and by other means.

The City's levy scheme, which has been increased to all of the Local Government Area since July 2021, is expected to deliver a further 1,950 affordable dwellings.

On 22 June 2023, the NSW Parliament passed the Residential Tenancies Amendment (Rental Fairness) Bill 2023, which includes implementing a portable rental bond scheme. I welcome the NSW Government's commitment to strengthening renters' rights and rebalancing the rental market. I also welcome the appointment of Trina Jones as the NSW Rental Commissioner, who will be a voice for renters and will design and implement initiatives to deliver on the NSW Governments rental reforms agenda.

The NSW Government recently concluded consultation on further proposed changes to the Residential Tenancies Act 2010. The City of Sydney's submission supports balanced and sensible recommendations that the NSW Government should implement. They include:

- ending 'no grounds' evictions on all leases including at the end of fixed term leases;
- increasing the notice period to terminate a fixed term lease from 30 days to 90 days, so it aligns with the notice period for rolling leases;
- addressing loopholes so that rent increases are limited to once every 12 months, including when a fixed term lease changes to a rolling lease;
- making it easier for renters to have pets, by limiting the reasons a landlord can say no;
- introducing minimum rental efficiency standards for all rental properties in NSW;
- implementing a portable bond scheme, to allow a renter to transfer their bond to a new tenancy, before the bond from the old tenancy has been repaid; and
- other improvements such as protection of renters' data and privacy, making information about median rents publicly available, and letting renters know about embedded networks.

The NSW Government must work collaboratively with important stakeholders such as the Tenants Union of NSW and others to ensure the rental market supports long term renters, provides increased certainty, and slows down rental increases.

On 22 June 2023, the Australian Government established an inquiry into the worsening rental crisis in Australia with consultation currently underway. Last week, National Cabinet agreed on some national principles of renter's rights. Every state and territory will work towards ending no grounds evictions, limiting rent increases to once a year and developing minimum rental standards. This is a good starting point but doesn't go far enough to stop excessive rents.

It is critical that all levels of government hear from people about their experiences of the rental situation in Australia and seriously look at what can be done to rein in excessive rent increases.

Excessive rent increases

Excessive rent increases are already unlawful in NSW, but there is little guidance on what is 'excessive'. The burden is on the tenant to prove the increase is excessive in the NSW Civil and Administrative Appeals Tribunal. This approach has not worked because of the sheer effort renters need to assert their rights. Tenants cannot easily find or access timely information on median rents. Additionally, few renters have the time, energy and tenacity needed to lodge an appeal in the tribunal and wait for the outcome of that process.

In the ACT, excessive rent rises are defined as greater than 110 per cent of the consumer price index (CPI) for rent. Owners or agents can still request more, but the onus is on them to argue the case that it is not excessive in the tribunal. A clearer definition of what is considered 'excessive' rent increases must be included in any new legislative changes by the NSW Government.

Limits on excessive rent increases must only be introduced alongside sensible reforms to short term rental accommodation rules.

While short-term letting helps facilitate local tourism and can help people earn extra cash, we need tighter State regulation to stop homes being wholly converted into short-term rental properties and contributing to a lack of supply for long-term housing. The concern is not hosted properties where someone might rent out their spare room occasionally or properties that are leased out while the resident has gone on holiday. A balanced approach that distinguishes occasional short-term letting from commercial tourist and visitor accommodation is required.

The current framework for regulating short-term rental accommodation includes an exempt development pathway allowing hosted and non-hosted short-term rentals for up to 180 days per year. Any bookings of 21 consecutive days or more are exempt from the 180-day cap. Given the acute rental affordability crisis in the inner city, the City of Sydney has consistently advocated for this to be lowered to a maximum of 90 days per year.

In May 2023, Council resolved that the Chief Executive Officer investigate commissioning a study to report on the impact that short-term rental accommodation is having on rental affordability and availability and tourist accommodation in the City of Sydney Local Government Area. We will send the results and recommendations of that study to the NSW Government when it is complete.

With over 58,000 people in NSW on the Social Housing waiting list, we desperately need investment in new Social and Affordable Housing and homelessness services that are already stretched to the limit. The \$10 billion Housing Australia Future Fund will create around 30,000 Affordable homes. It is not the panacea - but it is a significant step in the right direction. It is essential this Bill is passed without further delay.

Legislating for improved renters' rights and limiting rent increases will result in greater transparency between landlords and tenants, which is strongly supported by the City of Sydney.

