

# Submission on Improving NSW Rental Laws

AUGUST 11 2023

Dear Minister,

The Western Sydney Leadership Dialogue (the Dialogue) welcomes the opportunity to comment on the proposed improvements to the NSW rental laws.

The regulation of the rental market in NSW has favoured the interests of landlords and agents over tenants for far too long. The Dialogue applauds the thoughtful re-balancing of power the proposed changes will affect and enthusiastically supports these measures that will ensure renters are afforded the dignity and certainty that improved security in housing brings.

The Greater Western Sydney (GWS) region is disproportionately affected by the current rental laws compared to the rest of Sydney. Home ownership rates throughout GWS have been falling since 2016, whilst the number of rented dwellings in our region has increased faster than in the rest of Sydney. In 2021, 37% of GWS renters were living in rental stress; a figure that can only be expected to have ballooned due to the current economic conditions compounded by historically high interest rates, the cost-of-living impacts of the war in Ukraine, and lingering effects of the COVID-19 pandemic.

It is clear that the acute housing crisis in NSW is entering an even more dire stage, and whilst we applaud and support the positive shift in direction these regulations reflect, it is imperative we do not lose momentum in working towards a system that puts renters and landlords on an even footing. Recent polling co-commissioned by the Tenants' Union of NSW and other interested groups indicate that 86% of renters in Western Sydney have experienced increased housing costs in the past year. As rents continue to soar in the region, the flow on effect of a lack of private rentals adds additional pressure to the social housing system and waitlists – which we know is overstretched with no short-term improvement in sight.

Already, 57,000 households are on the NSW waitlist, with almost half of those waiting already living in homelessness and many of them expecting to wait years for housing to become available. In the GWS social housing allocations of Liverpool, Fairfield, Parramatta/ Baulkham Hills, and the Blue Mountains, households can expect to wait over 10 years before any property type becomes available. This shortage has been exacerbated by consecutive years of shortfalls in the construction of new homes and the recent cost-of-living crisis. For our Partners and stakeholders in the community housing sector, these reforms are extremely significant, as without adequate action to address conditions affecting renters, the dramatic pressure on the social housing system will only deepen further.

The Dialogue strongly supports the shift in a positive direction evident in all the proposals suggested by the NSW Government in these rental reforms. In particular, we are heartened by the following:

### ENDING 'NO GROUNDS' EVICTIONS

The Dialogue enthusiastically welcomes the proposal to end 'no grounds' evictions and the introduction of a portable bonds scheme. Eradicating 'no grounds' evictions has long been recommended by tenant advocacy groups as the most effective policy to provide greater security to renters. Many renters report avoiding contacting their agent or landlord for desperately needed repairs or maintenance for fear of retribution in the form of lease termination. Data from the NSW Civil and Administrative Tribunal for 2021-22 shows that landlords in the private market make just over 70% of the total applications to the Tribunal, with the rate of eviction applications many times higher in the south-west and west of Sydney compared to those in the Eastern Suburbs and North Shore. Where the rate of eviction applications in Sydney's inner west was 0.7 per 100 rental properties, this rate increased to 3.8 per 100 rentals in Liverpool.

The adoption of the model used in the Australian Capital Territory, which stipulates that a **landlord must provide a valid reason to terminate any lease type**, should be legislated in NSW to encourage an environment where tenants do not fear retaliation for simply requesting maintenance on the property they rent. Renters and landlords deserve stability and security, and the prescribed reasonable grounds for termination strike the right balance of interest for both tenants and landlords.

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## PORTABLE BONDS

The development of a portable bonds scheme is also a pleasing move. The Tenants' Union of NSW estimates the average cost of moving homes to be between \$3000 and \$5000. **Introducing a portable bonds scheme, and ensuring renters have a minimum of 30 days to pay any outstanding difference of the bond,** will greatly assist low- and middle-income residents of GWS to minimise the financial stress of moving house.

## RENTAL AFFORDABILITY

The Dialogue strongly supports measures to enhance rental affordability, including fair limits on the size and number of rental increases allowable during a tenancy. Of the top 10 LGAs in Greater Sydney with the highest proportion of households experiencing rental stress, GWS is home to seven. Renters living in GWS experience rental stress at higher rates than their counterparts in the Eastern Harbour City and have significantly lower average incomes. Vacancy rates for rental properties in GWS are also at dramatic lows, as low as 0.3% in Bankstown, which has generated fierce competition in the market and upward pressure on rents.

**Setting definitive and fair limits on the frequency and size of rental increases** helps keep rents at manageable, fair prices, and will close a remaining loophole that has allowed landlords to hike rents multiples times in a year when switching between a fixed term and rolling lease. The Dialogue supports **requiring landlords or agents to report rent increases directly to the NSW Government or another freely accessible online platform.** A transparent publicly accessible dashboard should be implemented to communicate this information and should help to minimise excessive increases by enabling simple benchmarking by location and property type.

## AUTOMATED DECISION MAKING & DISCRIMINATION

The Dialogue welcomes steps to limit the usage of automated decision making (ADM) in the selection of prospective tenants. **We strongly recommend limitations be placed on ADM,** and more generally during the application process, to ensure that **only highly relevant information to a tenancy agreement can be collected and used in choosing a tenant.** This will ensure all applications are assessed on fair terms and will minimise the risk of private personal information being used inappropriately or maliciously.

GWS is home to the largest urban Aboriginal and Torres Strait Islander population in NSW and an impressive culturally and linguistically diverse population. These are all groups identified by the NSW Government to have reported experiencing difficulty and discrimination in the rental application process.

## INFORMATION & CYBER SECURITY

The Dialogue supports increased focus on the information and cyber security aspects of renting. Realtors deal with and store sensitive personal information, considered high-risk if compromised. Many real estate businesses have been flying under the radar of this issue for far too long. This has been allowed by the lack of applicable NSW information privacy laws, and the Commonwealth's Privacy Act only applying to organisations with an annual turnover of \$3m or more, or operating a residential tenancy database.

In the current context of rapidly increasing interconnectedness of technology and growing cyber security threats in lockstep, it is questionable that such sensitive information would be allowed to be collected, shared with third and fourth parties, and stored without legal obligations under a state-based Privacy Act. Numerous real estate companies in 2022 reported security breaches of personal data from both tenants and landlords, including banking and passport details. But, without reporting obligations, it is doubtless that this number is much higher.

As a starting point, we support the **introduction of a uniform rental application form to standardise the type and amount of information required** for all rental applications. The Dialogue strongly encourages that the NSW Government ensure the amendments to the Act proposed in the consultation paper align with the 13 Australian Privacy Principles outlined in the Australian Privacy Act 1988.

GWS is built of small businesses and entrepreneurs, and as a result, regulation changes that affect organisations of this size ripple strongly through the region. The Dialogue also acknowledges that approximately 45% of real estate agencies are small businesses. We recommend that a **working party which includes NSW Fair Trading, Cyber NSW and the NSW Small Business Commissioner be convened to identify cost reductions for small businesses that are needed to assess and implement technical and governance controls to become compliant with the legislation.** The working party should also create and communicate the existence of step-by-step pathways to assist with the infosec transition for these businesses.



### THIRD PARTY PAYMENT SERVICES

The review rightly points out the concerning proliferation of third-party platforms to facilitate rental payments and other basic administrative functions between a renter and their landlord. Such services are, more often than not, a shameless graft and ought to be eradicated. While the review likely cannot ban a category of business like this from operating, we strongly **support the mandated provision of fee-free payment channels for all tenants across NSW.**

Additionally, the Dialogue applauds the recent appointment of the NSW Rental Commissioner to oversee the design and implementation of these rental regulations. We are encouraged by the Commissioner's full remit, particularly the impetus to identify and investigate other issues impacting the NSW rental market, and we believe this will provide improved conditions and transparency in this sector. For those in insecure situations, or attending the Tribunal, the Commissioner will be looked to as a key government support. The Dialogue emphasises that it is therefore **imperative that the Rental Commissioner is well-resourced and has the full backing needed to fulfil its responsibilities.**

Separately, but somewhat related, the Dialogue is advocating at the federal level for the passage of the Commonwealth Government's housing reform package. We note that a point of contention with key obstructionists to this legislation is a lack of action to address the national rental crisis. We believe the above mentioned resourcing, efficacy, and visibility of the NSW Rental Commissioner will be critical to demonstrate how meaningful change can be achieved at the state level to address the well-founded anxieties that have surfaced in federal Parliament as a result of the current rental crisis.

Again, we welcome these steps towards a more balanced relationship between landlords and renters, and the increase in stability and security that they will bring. We also look forward to the flow-on positive impacts across the whole housing sector these will promote.

[Redacted Signature]

Regards,  
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Western Sydney Leadership Dialogue

## Western Sydney Leadership Dialogue

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