It is very clear that for tenants in our region, renting is becoming more expensive and insecure. Vacancy rates are low, rents are increasing, and tenants are fearful of the next email or letter from the agent servicing notice or increasing the rent to an unaffordable level. Renters are fearful of eviction if they seek even the most basic of repairs due the ability of the landlord to issue notice without grounds. To many people that we assist, the fact that they can be evicted without grounds is very difficult to fathom.

Change is needed, and we are grateful to be able to make this brief submission with reference to the policy work of the Tenants Union of NSW.

Removing 'no grounds' terminations

Q1. What is your preferred model for ending fixed term leases and why?

Landlords must be required to provide a reason to end an ongoing lease *and* a fixed term lease. All renters should be provided with a valid reason for ending a tenancy. Removing 'no grounds' evictions must include removal of section 84.

The use of fixed term leases is already used as a vessel to inflate rents more than once per year and anecdotally to keep tenants from seeking to assert other rights under the agreement for fear of a 30-day eviction. If s84 is retained, the introduction of reasonable grounds is unlikely to have the desired effect of increasing security of tenure as it would be likely that landlords would move to rolling fixed term leases to enable them to end tenancies without grounds.

The Tenants Union of NSW notes where states have adopted ending no grounds only on continuing agreements advocates report landlords and their agents have taken advantage of this loophole to shift renters onto shorter term fixed-term tenancies – for instance, 6-month agreements – so they can continue to evict without grounds.

New reasons for ending a tenancy.

Q2. Are there any other specific situations where a landlord should be able to end a lease?

Property will soon be sold.

A landlord can currently issue a notice of termination when premises are sold, and contracts require vacant possession. It is unnecessary to add this reason and risks providing a 'catchall' for a property owner to evict a tenant.

The inclusion of 'intention to sell' as a reason for eviction introduces the possibility that a landlord may say they are preparing to sell, evict a sitting tenant, and then simply 'change their mind' and bring in

new tenants. If intention to sell is included in a valid reason to evict, lengthy restrictions on reletting must apply. i.e., at least 12 months.

The property will go through reconstruction, repair or renovation that requires it to be vacant.

A tenancy agreement conveys an obligation that a landlord carry out necessary repairs and maintenance. Repairs should not be a valid reason to evict a tenant. S 109 already deals with uninhabitability and allows parties to end the agreement should there be an event outside the control of the landlord or tenant.

If repair and renovation is included, it must be clarified that this is allowable only where the landlord genuinely intends to carry out *significant* repair and renovation of the residential premises and where the repairs are not required because of the landlord's breach of the agreement. e.g., allowing premises to run down to get vacant possession.

Termination for significant repair or demolition, if included, needs to apply a temporary ban on re-letting of the property for 12 months to discourage misuse of this reason. The landlord, if using demolition and reconstruction as a reason to evict, should be required to demonstrate they have obtained all necessary permits and consents to carry out the planned demolition of the premises and reconstruction.

Landlord wants to use the property differently (Change of use)

Where the landlord intends to change the use of the property, such use needs to be clearly defined and the landlord should be required to provide a declaration that premises will not be used as a residence for at least 12 months. Permitted change of use should not include holiday letting. I.e., there should be no residential purpose.

A ban on reletting premises for residential use should be in place for 12 months for this reason.

Landlord or a member of their immediate family is moving into the property.

In these circumstances, where there is a periodic tenancy or a fixed term lease is coming to its end a landlord should only be able to serve a termination notice on this basis as long as they can demonstrate a genuine intention to use the property as their principal place of residence, and that they intend to occupy the property for at least 12 months. There should be a temporary ban on re-letting the property for 12 months.

A clear definition of family must be provided within the Act.

Appropriate notice periods

> *Q3. What would be an appropriate notice period for the five proposed reasons (and for any other reasons you have suggested)? Why is it reasonable?*

Tenants contacting our service note that an unplanned and forced relocation takes time, money, and available premises. It is exceptionally difficult for many tenants to relocate in the current climate with vacancy rates in the private rental market so low.

Close to 44% of our client contacts relating to termination are for notices without grounds. The tenants are not expecting notice and are not prepared for the costs, being it economic, social, or emotional. The experience of this service has been that many tenants are finding it difficult to secure a new rental property, raise the funds to relocate and afford the soaring rents. Many tell us they are facing imminent homelessness.

Appropriate notice periods may vary depending on the ground provided. For any 'no fault' eviction (i.e., where a renter is not in breach of the agreement) we recommend no less than 90 days' notice should be given. Some grounds may require a longer notice period (more than 90 days).

Evidence requirements

Q4. What reasons should require evidence from the landlord? What should the evidence be?

Documentary (written) evidence should be provided to the renter with a termination notice for all proposed new reasons. Evidence must be sufficient to demonstrate the validity of the reason for termination.

In Victoria the Director of Consumer Affairs determines - approves and publishes - the appropriate documentary evidence that is required to support the reason for giving a notice to vacate for each 'no fault' reason available.

The Victorian model provides clarity and some flexibility to ensure all parties are aware of requirements, and that requirements can be updated as the relevant forms of evidence or documentation change over time.

Q5. Should any reasons have a temporary ban on renting again after using them? If so, which ones and how long should the ban be?

It is the experience of this service that no grounds notices have been used by landlords as an 'easy out' to remove a tenant seeking to assert rights, or to turn over a tenancy and inflate rents. It is critical therefore that appropriate compliance protections are required to ensure landlords do not misuse newly introduced 'reasonable grounds' for eviction.

It is important that if a renter is going to be put through an eviction, there is evidence that the eviction is necessary and genuine, and proper safeguards are in place from wrongful evictions.

Limiting a landlord from reletting premises for specified timeframes add to the consumer protection in that it acts as a disincentive to use the provisions to churn tenancies and either increase rents or remove a tenant seeking to assert their rights.

Where a landlord seeks to re-let premises within the set timeframes, financial penalties should apply, and compensation should be payable to the dispossessed tenant.

The following reasons should have a temporary ban on re-letting applied as indicated:

- Change of use 12 months
- Demolition and/or reconstruction 12 months

- Landlord or immediate family moving in 12 months.

Additional issue: Renter must be able to move out at any time once termination notice served.

Our clients face the prospect of paying double rent when landlord issues notice while the fixed term is on foot. The sitting tenant cannot leave without the penalty of a break fee. Where there is no breach by the tenant, and a valid notice with reasonable grounds the tenant is tied both to the fixed term and in having to sign up to premises as they become available or potentially face homelessness, or a double relocation. This effectively becomes a penalty for being in a fixed term.

Section 110 of the *Residential Tenancies Act 2010* allows renters evicted during a periodic agreement to move out and stop paying rent at any time before the termination date listed on the notice. This provision should be extended to include all reasonable grounds notices.

Additional issue: Retaliatory evictions and Tribunal Discretion

We support the Tenants Union of NSW position that consideration of reforms to retaliatory evictions should also be considered as part of this reform because of the potential for misuse of grounds (both established grounds within the Act, as well as any newly introduced reasons).

The factors the Tribunal can consider when determining retaliatory action should be broadened.

The legislation should remove the Tribunal's discretion where retaliatory action is found.

The onus of proof should shift from the tenant.

A preclusion period for another notice should be introduced.

Tribunal discretion

When introducing new reasons for termination, the Tribunal should have discretion to decide if in the circumstances it is appropriate to terminate the tenancy.

At present the Residential Tenancies Act provides discretion to the Tribunal in most termination proceedings with grounds. Where termination is for breach, for example, the Tribunal must consider the seriousness of the breach and whether it justifies termination.

It is appropriate that for any new reason introduced the Tribunal be provided with discretion to decline termination. The Tribunal must be allowed to consider other relevant factors and the circumstances of the case to determine whether it is satisfied it is appropriate to terminate the tenancy.

Additional issue: Termination of long-term tenancies (section 94)

Reforms to remove 'no grounds' evictions must ensure all renters are provided with a valid reason for ending a tenancy. This must include renters in long term tenancies - that is, in a tenancy where a renter has been in continual possession of the same residential premises for a period of 20 years or more. These renters should be provided with both valid reasons and extended time to vacate.

A new model for keeping pets.

> *Q6. Is 21 days the right amount of time for a landlord to consider a request to keep a pet? If not, should the landlord have more or less time?*

Landlords should be required to respond in a timely manner to a request for a pet. In the ACT, for example, landlords are provided 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.

Renters require a response to their request within a reasonably short time frame for them to make an informed decision in relation to their pets (or planned pets) and plan appropriately, minimising any anxiety or concern in relation to the request. Where a landlord wishes to refuse a request, they will be provided more – and sufficient – time to gather evidence and prepare an argument before the hearing at Tribunal.

14 days is a reasonable amount of time for a landlord to consider and respond to a renter's request to keep a pet.

Where a landlord is seeking an order to refuse a request for a pet, they should be required to do this within a 14-day timeframe from the date on which the renter made a written request.

Refusing a request

> *Q7. What are valid reasons why a landlord should be able to refuse a pet without going to the Tribunal? Why?*

The landlord should be required to apply to the Tribunal if they seek to refuse a pet.

Given it is the landlord who is seeking to restrict the actions of the renter, and to limit the renters' contractual rights to peace, comfort, and privacy the responsibility to apply to the Tribunal should be placed on them.

Animal welfare considerations

The Tribunal should be guided to consider the suitability of the specific pet for the residential property primarily by reference to existing animal welfare guidelines on companion animals, and/or existing law including council zoning laws or council ordinances.

These guidelines should be developed in consultation with animal welfare groups and the broader community and provide clear guidance on the welfare needs of companion animals in relation to residential premises.

Any further regulation around responsible pet ownership, welfare standards, and residential premises should be applied through relevant companion animal regulations rather than tenancy law. Regulation must apply to all pet owners regardless of their tenure.

Conditions and/or ongoing restrictions on pets in a property

Q8. Should the Tribunal be able to allow a landlord to refuse the keeping of animals at a specific rental property on an ongoing basis? Please explain.

Q9. What other conditions could a landlord reasonably set for keeping a pet in the property? What conditions should not be allowed?

Each pet request should be assessed on its own merits, and with reference to the particular circumstances of the specific companion animal and the property at the point in time that the request is made.

The landlord should not be allowed to put special conditions on the keeping of a pet in the property, including conditions such as not allowing a pet inside or providing specific compensation for any pet damage or changes to the property.

If any damage does occur inside a property, renters already pay bonds to cover potential damage to the property, whether this damage is from a pet or human. There is also recourse for landlords to recoup any potential costs above the bond amount.

Renters should not be subject to additional rules that others in the community are not required to follow (see also further discussion regarding animal welfare regulation above).

Additional issue: Addressing pets at application.

While changes proposed in the Consultation Paper if introduced will make it easier for renters to request to keep a pet, further consideration is needed in relation to minimising the discrimination pet owners face when applying for rental properties. Knowing that many advertisements for rental properties clearly state no pets, it is problematic to not address this issue while addressing pets in rentals.

At present renters are generally asked to disclose if they have a pet when applying for a new property. Landlords and agents may simply reject all applications where applicants have indicated they have a pet.

To address this problem the RTA could be amended to prohibit landlords and agents from asking about pet ownership at the application stage. Renters would still be required to make a request to keep a pet once their application was successful and they enter into an agreement. If the landlord does not believe their property is fit for a pet, or for the type of pet that the renter has, the landlord may then take the matter to the Tribunal to obtain an order allowing them to refuse permission.

A suitability statement could instead be developed for premises.

Additional issue: Pet bonds

Rental pet bonds should not be considered as an additional condition for keeping a pet. The current legislation already allows a landlord to recoup damages via bond.

Pet bonds are unnecessary and may result in inequity.

Renters' personal information

Regulation of collection of information during the application process

Q10. Do you support limiting the information that applicants can be asked for in a tenancy application? Why/why not?

Q11. Do you have any concerns with landlords or agents only being able to collect the information set out in the table above to assess a tenancy application? Please explain.

Q12. Do you support the use of a standard tenancy application form that limits the information that can be collected?

Q13. Do you think that limiting the information that may be collected from rental applicants will help reduce discrimination in the application process?

Regulation of the application process for private rental housing is required to provide greater protection against discriminatory and/or intrusive requests for information at application, as well as greater transparency regarding the decision-making process for applicants.

This should be done through the introduction of a prescribed standard rental application form. This would provide greater protection against a landlord or agent from unlawfully discriminating against an applicant by ensuring they are not able to request any information about a renter that could be discriminatory, under the NSW Anti-Discrimination Act 1977.

In addition, an explicit restriction on a request for information that could be used to unlawfully discriminate against an applicant could be introduced.

We support a model that combines prescribing a standard rental application form, alongside specifying what additional information or documentation might reasonably be collected to support the application.

Applicants should be able to choose which of the documents or information they will provide. Landlords must be restricted from specifying a preferred type of information or refusing to accept a type of information.

Additionally, we note the following about the types of information in the Table:

- Disputes regarding rental bonds are not uncommon. An applicant having previously been in a bond dispute is not a relevant indicator of suitability for rental premises.

- Redaction of personal information The redaction of sensitive personal information on bank statements and or other financial documents - including BSB and Account numbers - would provide greater assurance to applicants given the cyber security risk in relation to this type of information.

- Provision of information to tenant Where a reference is received directly, such as through an online portal, without the applicant viewing it this should be supplied to the applicant at the same time the agent receives it or as soon as possible after.

The utility of information gathered not through the direct application should also be included in the limitations on gathering information. In particular the use of oral reference checks, information held in tenancy databases and investigations on social media should be restricted.

These information sources should only be used in service of assessing the sustainability of the tenancy. Oral reference checks are inscrutable and inappropriate information easily shared.

Limits should be placed on the types of additional information and the number of pieces of information that can be requested for specific categories of information (i.e., Information relating to: Proof of identity; Ability to pay agreed rent; Suitability)

Renters, not the landlord or their agent, must be able to choose which of the types of information they will provide for each category for which information can be requested.

Use and disclosure of renters' personal information.

Q14. Do you support new laws that set out how landlords and agents can use and disclose renters' personal information? Why/why not?

Q15. What should applicants be told about how their information will be used before they submit a tenancy application? Why?

Q16. Do you support new laws to require anyone holding renter personal information to secure it? Why/Why not?

Q17. How long should landlords, agents or proptechs be able to keep renter personal information? Please explain.

Q18. Do you support requiring landlords, agents or proptechs to:

(a) give rental applicants' access their personal information,

(b) correct rental applicants' personal information?

Please explain your concerns (if any).

Stronger protections that provide specific guidance on how renters' information can be used and shared are required. These should apply not only to real estate agents, but also landlords, and property and rental technology companies.

Use of personal information

Renters give their personal information over to these parties for the specific purpose of assessing the renter's suitability for a rental property. This is the only way in which the data should be used, and there should be clear restrictions against using information collected for marketing purposes, or for it to be shared with or sold to other parties.

Strict restrictions against the on selling of data to third parties should be implemented, with penalties to apply for non-compliance.

How much and how long personal information should be collected and held.

No more data than is necessary to assess their application should be collected. Their data should not be stored for longer than is needed to assess an application.

Renters' information should be kept (or stored) securely, and there should be appropriate time limits on how long information about a renter can be kept. Time limits may appropriately vary for unsuccessful applicants vs successful applicants (those who enter into a tenancy agreement). In both cases, data

should not be held by a landlord, agent or proptech company for any longer than it is reasonably necessary.

Renters' access to information

Where renters have provided information or aware information has been collected about them, they should be able to request access to this. Landlords, agents and PropTech/RentTech companies should be required to correct rental applicants' personal information as necessary.

Information collected by for applications should be limited, safe and stored securely. Information stored should be minimal, for instance:

- For landlords and agents
    - For a successful applicant
      Contact information such as phone and email address needed for the ongoing relationship should be stored securely.
      The tenant should be provided with copies of any information held about them and then all non-contact information destroyed within 2 months of entering into the agreement.
    - For unsuccessful applicants
      Information and documentation should be destroyed once an agreement has been entered into unless the unsuccessful applicant gives explicit and withdrawable consent for the retention of information in response to a plain language explanation of its use for a specific time frame of no more than 6 months or as directed by the person. At the end of that time frame, information must be destroyed, or consent renewed.
- For third parties
  Information should be destroyed upon completion of the application unless the person gives explicit and withdrawable consent for the retention of information in response to a plain language explanation of its use for a specific time frame of no more than 6 months or as directed by the person. At the end of that time frame, the information must be destroyed, or consent renewed.
- For all
  Renters should be given access to personal information (including specifying this be free, reasonably accessible, and clear timeframes for response)

Portable bond scheme

Timeframe for renter to make up difference in bonds.

> *Q21. How long should a renter have to top up the new bond if some or part of the bond has been claimed by the previous landlord?*

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.

At a minimum renters should be given no less than 14 days to top up the new bond. More time – 30 days, or more than 30 days – would provide renters greater flexibility and help minimise the financial disruption moving often causes.

Responsibility for liability, support to sustain tenancy.

> *Q22. What should happen if the renter does not top up the second bond on time? Please explain why.*

Moving is expensive and sometimes unplanned. The proposed portable bond scheme is intended to reduce the financial disruption that moving often causes. Renters struggling to pay the difference in bond amounts should be supported to make the payment while they recover from the financial difficulties associated with moving house.

If a renter is not able to pay the difference in bond within the time limit, the new landlord's bond should be guaranteed by government. Where the government guarantees the bond, they may then seek repayment of the difference in bond and offer appropriate support if the renter is facing financial hardship. Support could be provided through or some form of payment plan arrangement. The Department of Communities and Justice already has a bond loan scheme with structures in place to facilitate repayment of the loan into the Bond Board, and statutory protection of interests. The loans are only available to low-income households eligible for social housing and the rate of default is reported to be almost non-existent. In the case of rare defaults on the loans these are best referred to government debt collection services.

Appropriate hardship support should be made available for those renters struggling to pay the difference because they are experiencing financial hardship.

Defaults on the guarantee

Availability and use of scheme

> *Q23. Should this scheme be available to all renters, or should it only be available to some? Please explain why.*
>
> *Q24. Who should have a choice on whether to use the scheme?*
>
> *Q25. What other (if any) things should we consider as we design and implement the portable bond scheme? Please explain.*

This scheme should be available to all renters and should be optional for renters to use. This would be significantly less complex to administer, reducing the costs to the government. It also reduces the already very low risk of default.

Landlords should be informed only that a bond is in place. Their interests are secured within the system, and it is already acknowledged that government support is used to discriminate against applicants.

Excessive rent increases

> *Q26. Do you have any concerns about the NSW Government collecting information on rent increases and making it publicly available for renters? If yes, please provide details.*
>
> *27. What do you think is the best way to collect this information?*

Currently the information that is available regarding rents and rent movements in NSW is based on the rental bond data held by NSW Fair Trading. NSW Fair Trading publishes data for recent rental bond lodgements and refunds. This reflects rent payable at the beginning of the tenancy.

There is currently no equivalent reliable dataset to provide visibility over rent movements within a tenancy.

The current rent increase provisions are reliant on 'market rent' as an indicator when Tribunal is determining an excessive rent increase matter. Reliable data on actual rents paid, rather than aspirational rents advertised is necessary. We support collection of this type of information to provide greater transparency and visibility across the private rental market.

An effective way for the NSW Government to collect this information would be by requiring landlords or their agents to report rent increases. This could be achieved by requiring that the increase be registered (with the appropriate agency or using an online system) and confirmation of this provided to the renter before the increase is considered valid. Reporting an increase would occur after written notice had been served, and the required 60 days written notice would still apply.

To ensure the data is reliable and timely, landlords or their agents should be required to report a rent increase to the NSW Government using an online system (such as Rental Bonds Online).

Rental affordability

Q28. Do you think the 'one increase per 12 months' limit should carry over if the renter is swapped to a different type of tenancy agreement (periodic or fixed term)? Please explain.

Q29. Do you think fixed term agreements under two years should be limited to one increase within a 12-month period? Why or why not?

The limited protections currently available are not adequate for renters who face an excessive increase during a tenancy. At present the *Residential Tenancies Act 2010* places a limit of one rent increase in 12 months for renters on a periodic lease. This is an appropriate, though limited, protection.

A limit of one increase within a 12-month period for a fixed term agreement under two years should also apply, along with stronger regulation regarding rent increase limits.

Landlord to prove rent is not excessive.

Q30. What do you think about the [below] options? Please provide detail.

Require a landlord to prove that a rent increase is not 'excessive' where, for example, a rent increase exceeds CPI over a certain period.

Amend the criteria in the Act for when a rent increase is 'excessive'. Currently, the list of factors that may be taken into account in considering if an increase is 'excessive' includes the market level of rent for comparable properties and the state of repair of the property.

Currently, the onus is on individual renters to challenge a rent increase, and the only basis to do this is if they believe it is excessive. Many renters do not feel confident challenging an excessive rent increase, and they may worry the landlord may retaliate in response.

This kind of information required to prove or disprove increased costs has generally been much more easily available to real estate agents and landlords.

Landlords should be required to justify a rent increase if it is over a reasonable threshold (set by a measure appropriately determined by the Rental Commissioner or another relevant independent agency). The responsibility to prove a rent increase is not excessive should sit with the landlord.

Factors to be considered regarding excessive rent increases.

Under the current system, rents are being set at a price that renters are 'willing to pay', that is – they accept the rent increase and may not move out – but this is only because they feel forced to. They are facing undue pressure given the current housing crisis.

Currently, the list of factors that may be taken into account in considering if an increase is 'excessive' at section 44(5) includes, as the first concern listed, the market level of rent for comparable properties. In most cases this is taken as the primary consideration by the Tribunal when determining whether an increase is excessive. It is weighted substantially in comparison to the other factors.

To ensure fairer rents and access to housing market rents should not be the primary consideration when determining whether a rent increase is excessive.

The Tribunal should be able to consider the question of affordability, and other questions relating to the landlord's motives for increasing the rent if warranted, when considering whether a rent increase is excessive.

Additional issue: rent increases between tenancies.

To help stabilise rents in the private rental market reasonable limits could also be placed on increases to rents for a property that is being re-let (between tenancies).

NSW already ensures that increases for rent between occupants is stabilised in land lease communities. New rents (known as site fees) cannot exceed the highest of either the rent paid under previous tenancy or within a range of median fees for comparable properties.

Other changes to make rental laws better.

Renting and Embedded networks

> *Q31. Do you support new laws to require landlords or their agents to tell rental applicants if a rental property uses any embedded network? Why/why not?*
>
> *Q32. When should a rental applicant be told that a property uses an embedded network?*
>
> *Q33. What information should a renter be told about a rental property using an embedded network? Please explain.*

There is currently no requirement to disclose prior to the renter signing on to the tenancy agreement. Disclosure should be required at the time of listing (advertising) a rental property and again at inspection.

The Information about embedded networks disclosed on a listing must include specific information about the utilities or services provided at the property through an embedded network and the retailer/s (where appropriate). This will allow renters to determine the implications of being tied to an embedded network.

Free ways to pay rent.

> *Q34. What would be the best way to ensure that the free way for renters to pay rent is convenient or easy to use? Please explain.*
>
> *Q35. Should the law require a landlord or agent to offer an electronic way to pay rent that is free to use? Why/why not?*

The law currently sets out that renters must be offered at least one free way to pay rent. However, some renters are still being offered cash or cheque as their only 'free' option, and often as the alternative to an electronic third-party rent payment service that incurs fees for use. This can still create a cost to tenants.

The law should require a landlord or real estate agent to also offer an electronic way to pay rent that is free to use, such as a direct bank transfer option.

Renting in Strata Schemes

> *Q36. What are the issues faced by renters when moving into a strata scheme? Would better disclosure about the strata rules for moving in help with this?*

Strata tenants report great difficulties in getting repairs and maintenance done to common property, with landlords 'passing the buck' to strata. Tenants meanwhile live with substandard housing.

Resolution of repairs and maintenance issues in strata building suffers from lack of clarity around who bears responsibility for the maintenance.

A simple solution for renters is that owners should be directly responsible for repairs and maintenance issues and then empowered to pass on costs to strata.

Thank you for the opportunity to make this submission.