



2nd August 2019

## **RESIDENTIAL TENANCY ACT 2010- 5 YEAR REVIEW**

**Residential Tenancies Regulation 2019 consultation**

**Regulatory Policy, BRD  
Department of Customer Services  
2-24 Rawson Place  
HAYMARKET NSW 2000**

**Email: [rtreg@finance.nsw.gov.au](mailto:rtreg@finance.nsw.gov.au)**

Submission from The Property Owners Association of NSW Inc

PO Box 329 Bondi Junction NSW 1355  
(02) 9363 3949  
[info@poansw.com.au](mailto:info@poansw.com.au)

## **BACKGROUND**

The Property Owners Association of NSW has been the peak body representing the interests of the private landlord residential accommodation market since 1951.

This submission is in response to the Residential Tenancy Act 2010 regulations 2019 review consultation.

We thank you for reaching out to us to submit. The submission was prepared by the POANSW committee of management who are short to long term residential accommodation landlords across the Sydney metropolitan market place and throughout NSW. The committee comprises licensed real estate agents, valuers, rooming and boarding house operators, boutique hotel operators and single to multiple investment property investors/landlords who either self-manage their own tenancies or engage property managers to do so. Residential tenancies consist of 31.4% of the NSW population who are either renting or landlords.

The Residential Tenancies Act 2010 and its regulations require review to meet tenancy challenges to reduce the pressures of housing in NSW.

These pressures include:-

1. Rapid rise in housing prices during the last decade of Australia's biggest housing and construction boom especially in the Sydney metropolitan area and other parts of NSW.
2. Inability of many people to fund their own a home, especially first home buyers who are attempting to move from the rental market and become owner occupiers.
3. Restricting the supply of rental properties which places pressure on rising rents due to the lack of capacity of private citizens to own more than one investment property.
4. Restrictions and challenges surrounding the new financial environment post APRA and Royal Commission interventions.
5. Lack of planning and inability of the State Government to expand the private, affordable and social housing supply to match the needs and demands of those seeking to occupy state and privately owned rental properties.

## **KEY STRATEGIES**

Ensure the viability of the private landlord market to supply private ownership of rental property.  
No viability results in no rental accommodation and thus no tenancy.

1. Ensure the terms and conditions imposed by a revised Residential Tenancies Act do not impede rental property ownership and that fair, balanced and practical laws govern the market place.
2. Reduce confusion of hard to read and interpret rules and regulations by incorporating plain English, uniform to all types of residential tenancies.

## **Main issues of concern raised by POANSW members**

- Condition Reports
- Domestic Violence Terminations
- Rental Bond Interest
- Minimum Standards
- Water Consumption
- Break Fees & Abandonment
- Commencement date

## **DISCUSSION**

### **Condition reports**

This section requires that a landlord give 2 hard copies or 1 electronic copy of the report to the tenant upon signing the tenancy agreement. POANSW believes it is not practical to give 2 hard copies of the report and questions why it's necessary. It is not necessary to give the tenant 2 x copies of the condition report. The purpose of issuing the report to the tenant is for them to add their comments then be returned as a dually signed version that each party keeps to the end of the tenancy. One agreed, signed copy is adequate, avoiding the confusion of a second unsigned copy being on file. Both landlord and tenant require the same original copy of the report to be served on each other as evidence of the condition of the premises. We recommend amending this section to "1 hard copy of the condition report and/or 1 electronic version"

POANSW requests an additional clause in this section. When a tenant fails to fully complete and return the condition report to the Landlord/agent within the prescribed 7 day period, the copy

originally issued by the landlord/agent will be deemed as the final report and be binding on the tenant.

### **Termination by tenant in circumstances of domestic violence**

POANSW welcomes legislation that protects victims of domestic violence, offers protection and ease of finding alternative accommodation. The landlord should assist with implementing any reasonable requests of the tenant/victim to minimize the impact of the criminal activity or domestic violence particularly where children, elderly or other disadvantage people are involved.

However Domestic Violence and any other form of criminal activity, not involving the landlord, are the sole responsibility of the tenants and adverse situations should be resolved by the tenants without loss of revenue, property damage and/or legal implications to the Landlord, who is merely the accommodation provider.

Where a co-tenant wishes to be released from a tenancy agreement the remaining co-tenants must agree to take over the tenancy responsibilities of the departing tenant.

This can be achieved by: -

1. Winding up the existing agreement and creating a new tenancy, or
2. Substituting a new tenant in place of the terminating tenant, with the agreement of the remaining  
Co-tenants and landlord, or
3. The remaining tenants being assigned the rights and responsibilities of the departing tenant

POANSW strongly opposes the motion of the landlord dealing with the perpetrator of domestic violence, which could well be a co-tenant or a sub-tenant, an occupant or an invitee on the premises. We reject the notion of having to communicate with a person who may have an AVO order issued out on them, whether an interim or final AVO. POA seeks a remedy that's quick and non-confrontational.

This section of the Act does not outline the steps for a landlord to terminate remaining co-tenants and this needs to be considered and added. Our suggestion is that a similar course of action should be allowed that is similar clause 90 of RTA 2010.

Fair Trading must clarify which party of the tenancy agreement orders made by NCAT compensates if premises are damaged, require cleaning, possible rubbish/uncollected goods removal and rental

arrears when a tenancy is terminated under this provision. Surely, not the perpetrator who may not even be a co-tenant named on the tenancy agreement.

Another issue is the distribution and change of shared tenancy ownership of the rental bond. How will the ownership of the rental bond change from one co-tenant to the next?

POA believes an interim AVO could be used as an attempt, by some tenants, to issue a termination notice under these grounds and thus oppose extending the current legislation (Sec 79) to include an interim AVO as evidence to justify termination.

### **Rental Bond Interest**

A residential tenancy is a partnership by the property owner and the tenant where the tenant pays for housing to be provided by a third party due to the inability of the tenant to fund their own property ownership.

This is an important partnership that brings with it very serious obligation by both parties. Educational packages that clearly spell out the rules and obligations are essential to a harmonious partnership and a reduction in conflict.

**The RTA should include an education campaign with Government funding via Rental Bond interest that is equally distributed to landlords and tenants alike. Currently this is not the case and there is no private landlord representative sitting on the Rental Bond Board committee representing those interests.**

It appears that NSW Government intends to take advantage of tenants in the current low interest environment, by reallocating interest earned on bonds away from property issues and toward 'general consumer'. Interest rates will increase in due course and will generate significantly more than the sums currently being earned. POANSW is opposed to interest earnings being taken from tenants who have deposited rental bonds in good faith.

POANSW is opposed to any funds from bond interest income being used for any non-property related matters. The proposed wording would allow future governments to allocate funding with limited consultation or restraint. Given current low interest rates POA believe it is not viable to eliminate interest returns on bonds, especially given a vague attribution to "other consumer protection purposes" and that any bond interest should be distributed to landlord and tenant support services.

### **Landlord's general obligations for residential premises "minimum standards"**

POANSW welcomes the focus on lifting the minimum standards in rental property. POANSW continues to advocate that all properties should meet minimum health, safety and compliance parameters. However, in order to retain the breadth of the rental market that tenants and landlords currently enjoy, it is important that the legislation continues to support sectors of the market that provide compliant and safe accommodation at low costs. Some premises, while safe and compliant, may fall below standards that some subjective observers would consider to be their minimum standard – with faded wall paint or dated tiles in bathrooms. This is especially true in inner Sydney areas where rents are at their peak.

These areas tend to include low cost, under market rent properties, where reduced rents are due to building age and condition. This is a situation that large groups of tenants don't just accept, but embrace as a compromise, allowing them to live in areas of the city that they otherwise could not afford. As such, in order to retain the breadth and variety of rental properties that the market currently enjoys, it must be emphasised in the Act that the condition of the premises provided is subject to the market rent, age and pre-existing wear and tear of the premises.

"Minimum standards" are generally covered by Australian building codes and this new proposed clause in the RTA should not be construed as providing scope for tenants to arbitrarily demand full refurbishments and upgrades to rental properties that are providing safe and compliant housing. Over time, this would ultimately lead to a sanitisation of the rental properties available, decreasing market depth, increasing rental levels, and may provide scope for reprisal action of a tenant towards a landlord.

POANSW argues that these provisions should only cover obsolete dwellings that are clearly unfit for human habitation. Rental properties in this condition should not be offered for lease, and should be required to be made good and fit for the purpose of residential accommodation. "Good repair" should not be used to describe the premises as this is too subjective. A clearer and more sensible approach is to introduce "minimum standard" language, requiring properties offered for rent to be in a "reasonable state" or "not unsafe for habitation".

There should also be limited emphasis on the landlord / agent to determine minimum standard compliance issues when it comes to the safety and structural integrity of property. Neither party hold qualifications to determine the structural integrity of a property when completing condition reports. In recent high-profile cases of buildings having structural failures such as Opal Tower or Mascot Towers, matters would be significantly more complicated had circumstances dictated that landlords or agents were responsible for ensuring structural integrity of the building prior to offering a premises for lease. Any certification of premises should be undertaken by a qualified professional who holds relevant qualifications and licenses in building safety.

There is a danger that the RTA could not become a "THIRD CHAMBER" for building regulation, and minimum standards could potentially conflict with existing requirements. This will create unnecessarily complex red tape, and divert resources that should be used to bolster the effectiveness of the existing building regulatory structure. For example Councils currently have powers to deal with safety, and health issues in buildings. They need to get on with doing their core duties properly, and leave the RTA to tenancy matters.

### **Water Consumption/water usage**

**Water, a household utility, should be considered, like gas, electricity, phone, internet as a service provided to a property. The Tenant should be required to hold a customer contract for water supply and use (similar to the current QLD model)**

Water supply provisions should be a contractual arrangement between the Tenant and the service provider.

Water conservation and responsible water use is exclusively under the control of tenants. Water metering, marketing and customer contracts are very different to by gone eras. Adoption of water

supply contracts by the tenant will simplify arrangements given that water supply contracts are not uniform statewide.

### **Break lease fee/ Landlords remedies on abandonment**

Since the inception of the optional 4/6 week break fee in the RTA 2010 there has been confusion in the market place for landlords, their agents and tenants to understand how this system operates on practical level. It has never been understood or explained to stakeholders who have the power to strike out the optional clause prior to a tenancy agreement being signed. Tenant or landlord? Resolution of disputes if landlord and tenant cannot agree on break fee terms.

POANSW supports a single method break fee to give clarity & reduce the confusion of a break lease situation triggered by tenants. We strongly support the mitigation of loss regime which has served well for over 3 decades, however we understand that tenants seek more certainty.

POANSW strongly opposes the “stepped” break fee proposed in the draft Bill. This clause would send more confusion into the market place due to its wording and difficulty in interpretation. It has financial repercussions that will impact landlords. The sliding scale is unfair and unjust and raises the question of the point of entering into a fixed tenancy agreement when it can be broken little repercussion on the party breaking the contract if a tenant walks away from their obligations. Yet the landlord remedy for financial compensation is nil should they not find another tenant during the proposed subsequent period.

It is also questionable on the intent of the minister of encouraging long term tenancies towards 5 years with the regulations encouraging up to 5 year lease terms but yet discouraging landlords and tenants to enter such agreements due to an inefficient break lease clause.

Rental markets in NSW are on an even playing field - inner Sydney being a completely different rental market to outer/ greater Sydney or regional/country areas which experience much higher vacancy rates and as such their ability to re-let a property to a new tenant is reduced and so is their financial compensation.

The current Inner Sydney vacancy rates are approaching 3% up 2% from 2 years ago and due to what appear to be an oversupply of new build apartment stock has put pressure on landlords who can be out of pocket with higher vacancy rates and reduced rental rates. Latest statistics and data from Corelogic and Domain indicate rents have fallen from 7-15% in some Sydney metro suburbs.

Legislators need to discuss with financial institutions the impact of the proposed stepped clause on tighter lending policies by the banks' to lend on property purchases. Several POA members have been faced with obstacles in the current lending environment due to scrutiny over non-fixed period tenancy agreements.

POA's submission of the RTA review Bill in January 2016, offered a compromise to have only 1 method of a break fee to be calculated and not have optional clauses that landlords and tenants have to negotiate as the path forward inside a tenancy agreement. We support the 4/6 week break method which seems to be the fair and reasonable compromise and a method for both parties we believe both can live with. It is unfair and out of balance that a tenant can issue 1 week notice to a landlord given they may still have 3 months of the tenancy to run. This 1 week notice period is 2

weeks less than the current statutory 21 days tenant notice to landlord outside a fixed term lease (periodic tenancy)

POA seeks clarity if this break lease clause is just for abandonment of premises or does it extend to the tenancy agreement under other circumstances where the tenant wishes to break their agreement within the fixed term for other reasons besides abandonment? The mere word abandonment paints a picture of a tenant absconding from the premises without notice. In most cases this is not the intent of the tenant when they have decided to break their lease and as such we think the word “abandoned” should be removed and this section of the Act called ‘Landlords Remedies on Tenants Breaking a Lease’ with abandonment being one of the scenarios of a tenants breaking their lease.

The POANSW would like to strongly emphasise to legislators that should the regulatory situation worsen for landlords inside the RTA, such as what is being imposed with the break fee, then there could well be a retaliatory move for private landlords to withdraw private rental accommodation from the RTA regulations into less regulatory environments and accommodation models such as short-term stays. This could put upward pressure on rents in the mainstream private rental market.

### **Commencement date**

The POANSW recommends the commencement date be towards the end of 2020 – potentially October 2020 and a ‘grace’ period of 12 months after the official introduction of the changes. The changes proposed are significant and all parties will need time to comprehend the changes and make adjustments to their documentation, processes, and properties. We highly recommend that the NSW Government implement a solid communications program to ensure property managers, landlords and tenants understand the legislative changes and the responsibilities of each party.

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### **CLOSING REMARKS**

The POANSW, in existence since 1951, has worked with NSW Government on the legislative front with a focus on achieving equitable and balanced outcomes for all stakeholders. Though some effort has been made to achieve those objectives from legislators we do raise very strong concern with matters raised in this submission and hope it is taken seriously.

The POANSW executive committee would like to thank the minister and his subordinates for continued open communication, feedback and face to face meetings in this review process and welcomes any further discussion of the points and issues raised.

Yours Faithfully,

John Gilmovich  
**President-POANSW**  
**On behalf of POANSW committee**