



## **Residential Tenancies Amendment Bill 2024**

**The Property Owners Association of NSW**

### **Feedback on the Residential Tenancies Amendment Bill 2024**

**To: Tim James MP Shadow Minister for Fair Trading**  
**Date: 17 October 2024**

# Introduction

This feedback to the Residential Tenancies Amendment Bill 2024 (Bill) has been prepared in response to a request for feedback from Pierre Okosdinossian, on behalf of Tim James MP, Shadow Minister for Fair Trading, WH&S, and Building.

The Property Owners Association of NSW (POANSW) is the peak body representing the interests of private property owners. It has been active since 1951, as a non-government enterprise representing private property owners and 'mum and dad' investors, who own small to medium sized property portfolios or are providing residential accommodation or commercial premises to the NSW market. Our members include operators of residential premises, boarding houses, hostels, student accommodation, and other residential accommodation products.

## Feedback on Bill

The Bill proposes amendments to the Residential Tenancies Act 2010, and addresses several separate areas of current residential tenancies in NSW. These include:

- Charges to tenants or prospective tenants in relation to applications for tenancy
- Methods of payment of rent
- Limitations on rental increases
- Abolition of 'no grounds' termination of tenancies
- Amendments to rules relating to pests in rented premises

Overall, in principle, POANSW is not opposed to proposed limits on financial charges to tenants for applications, or the proposed amendments to methods of payment.

However, POANSW is strongly opposed to the proposed changes to 'no grounds' terminations and limitations on rental increases.

POANSW is also opposed to certain aspects of the proposed changes to arrangements for pets in rented premises.

Each of these areas is addressed separately below.

### 'No Grounds' Terminations

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The Bill proposes to remove the current ability of landlords to issue 'no grounds' terminations, and introduces heavy penalties for any breach of the proposed new rules.

POANSW is opposed to the Bill in relation to 'no grounds' terminations, and moreover, notes that the proposed changes to the Residential Tenancy Act 2010, is likely to not only miss the mark in addressing the stated intention of the Bill, but will lead to an exacerbation of the rental crisis.

It is common ground between stakeholders that the upward pressure on rents has been created through a structural undersupply of rental stock. Comparative lack of rental housing stock, well below levels of demand have led to significantly elevated competition by prospective tenants for rental housing, and has placed significant upward pressure on rents. This view is largely agreed by all stakeholders and is not controversial.

In fact, in the second reading speech to parliament, it was stated by the Minister for Fair Trading that *"we know this rental market is the toughest that renters have seen for decades, with demand far exceeding supply."*

As stated above, this is an uncontroversial statement to make, and largely common ground.

The second reading speech in parliament makes clear that the aim of the Bill is to *"make renting fairer"*.

Given the common understanding that the rapid growth in rental levels is driven by an existing undersupply of rental housing in NSW, it should also be uncontroversial to state that any change which is likely to reduce supply, or increase demand will increase the upward pressure on market rents. In this regard, the Bill completely misses the market and does not make renting fairer. It does the opposite and disincentives investors in the sector by unfairly curtailing their rights.

While it will take time for the impacts to be felt by the market, ultimately, over time, the changes proposed by the Bill will lead to a reduction in investment, and a reduction in the availability of rental properties in NSW. And, a corresponding increase in rental levels. In this way, the Bill fails in its most basic objective.

In the opinion of POANSW, a 'fair' market is one where both parties are free to act in their best interests, and receive similar levels of modest legislative protections as participants in the market.

The current system of 'no grounds' terminations that is proposed to be abolished by the Bill is functional and works well in practice. It adequately and 'fairly' balances landlord and tenant rights. For example, section 115 of the Residential Tenancies Act protects tenants from retaliatory evictions, and prescribed notice periods provide adequate time for a tenant to find alternative accommodation.

The Bill requires that reasonable grounds be provided, and there is a prescribed list included in the Bill of what constitutes reasonable grounds. The Bill fails to protect landlords privacy to any extent. Legitimate reasons for termination can often be personal, such as divorce, illness, redundancy from work, or financial hardship. Any of these things could contribute to the motivation for a landlord to take possession of their rental property. The Bill requires full disclosure on the part of the landlord to the tenant, who, in reality has no reason to be privy to the landlords personal affairs. In stark contrast, a tenant terminating a lease, including during a fixed term, does not have to disclose anything other than their date of termination. Again, the Bill fails in its stated aim of a 'fairer system'.

The Bill also contravenes the freedom of the parties to contract. POANSW is not opposed to parties being prevented from terminating during a lease term, however, fixed period tenancies are intended by the parties, to end. Forcing one party (the landlord) to remain in the contractual relationship after the end of the term is unreasonable, and a breach of the rights of the parties to the contract.

A landlord who owns a property should be free to provide their premises to a tenant for a fixed term, with a view that at the end of the term, they can take back possession. The parties are free to agree any term at commencement, and a term of say 12 months, or 2 years, should be exactly that, a fixed term, that can be renegotiated at the end of the tenancy.

Overall, the abolition of 'no grounds' termination following the end of a fixed period tenancy puts landlords in a position that when they sign a lease for any term of more than 6 months, they may in a practical sense not be able to regain possession of their property without selling it.

While on the surface this Bill may appear to protect tenants rights, the longer term impact will be to reduce the number of landlords who are willing to invest money into the housing sector and provide rental housing. As the rights of investors are curtailed, the attractiveness of the sector is reduced.

If the NSW government had a real appetite for addressing the housing crisis, they would focus on increasing supply. Any thing else, no matter how sugar coated, is a tilt away from a 'fairer' system for both tenants and landlords.

## Limitation on Rental Increases

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The limitation on rental increases is a further disincentive to investment in the sector.

POANSW believes that the key to solving the rental crisis is incentivising investment into the sector and increasing supply.

While POANSW believes that parties should be free to agree to a rent that cannot be increased during a fixed term tenancy, the proposed changes limit rental increases after the end of the fixed term. Essentially, in circumstances where a fixed term ends after 6 months, and a landlord intends to offer a new lease, the rent in the new lease cannot be changed from the rent that was agreed in the previous lease.

This proposed change is an unreasonable impost on the parties.

## Pets in Rental Premises

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While POANSW does not oppose the right of tenants to keep pets in rental premises, the Bill should not include a deemed approval after 21 days. There are circumstances where this limitation is unreasonable. To name a few:

- The landlord may have given approval with conditions, and the tenant and landlord are negotiating the conditions over a period of more than 21 days.
- The landlord may require approval from an owners corporation in strata building which could take more than 21 days.

In relation to reasons for declining the application, the list is not extensive enough. For example, a landlord may themselves be allergic to cat or dog hair, and intend to live in the property in due course.

Also, noting that one of the reasonable reasons for refusal in the Bill is that potential damage caused by the pet may exceed the bond, it seems somewhat illogical to allow a landlord to refuse an application on this basis, but at the same time prohibit the landlord from approving the application with a condition relating to an appropriate increase to the bond. This structure situation is presumably not assisting either tenants or landlords, and fails the 'fairness' test, and indeed, logic.

## Conclusion

POANSW has considered the Bill and has provided the feedback above, aiming to provide input on as many aspects as possible. However, POANSW is a volunteer organisation, with limited resources, and does not have the capacity to undertake a thorough review or exhaustively investigate all issues associated with the Bill.

Overall, POANSW is concerned about the Bill, and its longer term impact on the rental housing market in NSW. It is likely that the proposed changes will exacerbate rental housing shortages, and over time, will place continued and increasing upward pressure on rents, worsening the rental crisis.

POANSW appreciates the opportunity to provide this feedback, and would be pleased to discuss this, and any issues related to the NSW housing market further with the shadow minister.

Yours Faithfully



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