Submission
No 11

RESIDENTIAL TENANCIES AMENDMENT (PROHIBITING NO GROUNDS EVICTIONS) BILL 2024

Organisation: Property Investment Professionals of Australia (PIPA)

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Prohibiting No Grounds Evictions

A submission by Property Investment Professionals of Australia (PIPA)

Introduction

PIPA is the peak not-for-profit industry body established to support and advocate on behalf of Australian property investment professionals and their clients.

PIPA works to improve the professional standards of specialists servicing real estate investors and to raise awareness of the important role a robust property investment sector plays in the national economy.

Our member cohort services a client base dominated by everyday property investors who supply approximately 85 per cent of all Australia's residential rental accommodation. We thank the government for the opportunity to provide input on the No Grounds Eviction rental reform.

Across Sydney right now, the rental vacancy rate – that is, the proportion of all rented dwellings currently available to tenants – sits at just 1.4 per cent, according to SQM Research. Economists consider a vacancy rate below three per cent to be indicative of more demand than supply.

It is important to recognise that prior to the COVID19 pandemic, the vacancy rate in Sydney was seen as a balanced market with a vacancy rate of about three per cent recorded.

How did we get here?

The evaporation of available rental properties did not happen overnight – but rather, has been well under way for years.

At the same time, demand for rental properties has soared over recent years. A combination of drivers has seen the number of prospective tenants dramatically outstrip the volume of homes available.

Firstly, rising property prices over the past few years have locked first-home buyers out of the market. People who would ordinarily move away from being renters now stay as tenants for longer. Likewise, skyrocketing purchase prices have dissuaded investors from purchasing new assets to rent out. According to CoreLogic, the median dwelling value in Sydney has increased 7.4 per cent over the year ending May 2024.

On top of prohibitive buy-in prices, would-be investors have been put off by restrictive macroprudential policy changes, uncertainty surrounding taxation at a state and federal level, inconsistent as well as chopping and changing rules and regulations, and more.

Secondly, a long-term underinvestment in affordable and social housing by governments has seen waitlists explode and supply dwindle. The most vulnerable in the community are now forced to compete with the middle market for a dwindling number of rental properties.

Thirdly, international migration has bounced back significantly post-COVID, and those new arrivals to Australia are overwhelmingly more likely to rent than buy a home– especially in Sydney. Plus, the international student market is booming once again and that cohort rents within in-demand, inner-city suburbs close to campuses.

And finally, the construction of new dwellings has slumped on the back of soaring materials costs, supply chain issues, instability in the homebuilding sector and general low buyer sentiment. Approvals and commencements are down sharply across the country, including in New South Wales.

The number of people renting the home they live in has soared over recent years. Renters are the fastest-growing tenure type in Australia. The number of renters in NSW alone has increased by 17.5 per cent since 2016, data from the 2021 Census shows.

At the same time, the number of people living in social housing has slid backwards sharply. This is not because demand has dropped. On the contrary, a continued lack of investment in homes for society's most vulnerable means the waiting list in NSW for social housing sits at around 50,000.

In a report on housing tenure, the Australian Institute of Health and Welfare concludes: "The price of housing, changing household demographics and population increases have influenced home ownership trends and a move from home ownership to renting privately."

If more people are renting because buying a home has become harder and the way we live has changed, then surely the focus of governments must be to create more rental properties to cater to this growing demand. Penalising and demonising property investors, who continue to provide the overwhelming lion's share of those homes, is counterintuitive.

Private investors are carrying more and more of the burden of housing people in NSW and yet face the prospect of ever-tighter restrictions that at best inflict stress and a financial cost, and at worst encourage them to sell up and leave the market.

The rental crisis being seen in NSW – and indeed right across Australia – is a matter of basic economics. Demand is much higher than supply, and so prices are rising.

Landlords are being wrongly demonised

The vast majority of property investors in Australia are private individuals with just one real estate asset – commonly referred to as 'mum-and-dad investors'.

They typically buy an investment property, likely with equity from their family home, to help sure up their later retirement years. They put it up for rent at a price determined by the free market. They diligently monitor their asset, investing in its maintenance and upkeep. They take care finding the best possible person to rent their valuable asset via professional property management.

From these arrangements, a healthy and strong relationship between landlord and tenant is grown.

The average landlord is not some faceless corporation or greedy slumlord with dozens of properties, despite some of the headlines seen in recent times.

Australian Taxation Office figures show 71 per cent of people who own an investment property have just one, while a further 19 per cent have two. Less than one per cent of all investors own five properties, and fewer than one per cent own six or more.

And, so, when looking for someone to blame for the state of the rental market, special interest groups, some politicians and the media find a scapegoat in the form of mum-and-dad investors with a single asset.

Landlords have been under attack for the better part of a decade. APRA has rolled out successive policies that dramatically limited investment activity. Dramatic changes to long-standing tax arrangements were major election platforms. Multiple states and territories rolled out restrictive reforms that made owning a rental investment less and less attractive and dissuaded prospective investors from entering the market. And then, the onset of the COVID-19 pandemic saw unprecedented uncertainty combine with emergency reforms, a mass exodus of tenants from inner-cities, and panic over the mid-term viability of investments.

Each year, PIPA conducts research about the general mood of investors when it comes to their past, present, and potential investment activity. The 2023 PIPA Investor Sentiment Survey found 12.3 per cent of investors sold one or more properties in the previous year across the country.

Just 24% sold to another investor, which means the majority of those investment properties were likely removed from the rental market.

Some 20% of survey respondents indicated they had sold at least one investment property in New South Wales in the year to August last year – following 24% saying the same in the 2022 survey. About nine per cent of all survey respondents indicated they had sold at least one investment property in Sydney in the past year.

And it is no mystery why. The survey also probed reasons for selling, and the results are clear. The most common motivator for selling cited by 47% of respondents was governments increasing or threatening to increase taxes, duties, and levies, making property a less attractive asset to hold.

Tellingly, that stressor ranked higher than rising interest rates and higher loan repayment costs (40.1%), negative cash flow due to higher mortgage costs (23.2%), a need to reduce total borrowings (33.1%) or offloading an underperforming asset (18.8%).

In a further warning to governments about the impact of their decisions, other reform-related reasons for selling included changing tenancy legislation (43%), rental freezes (34.6%), and rental increase limits or caps (27.7%).

Unfortunately, in another sign of more pressure to come for tenants, the survey found 38% of all investors feel it's likely they will sell within the next year.

The reasons why investors were thinking of selling included increases or the threat of increases to taxes, duties and levies (45.2%), changing tenancy legislation (43%), the threat or rental freezes (42.9%), and rental increase limits or caps being implemented (41.8%).

Should governments further increase or introduce new taxes and compliance costs, 47.2% of respondents said they would be forced to increase rents.

The roll-out of tenancy reforms, such as Prohibiting No Grounds Evictions, and even just the mere mention of potential major changes, can significantly erode confidence among investors.

For landlords, especially mum-and-dad investors, the decision to buy real estate to rent out is a big one. It comes with a high level of risk and a certain level of uncertainty, given the asset's success relies on free market movements. For that reason, even the suggestion of major reform such as this one can cause serious damage.

According to a recent survey by the Property Investors Council of Australia, 98 per cent of investors would not evict a tenant without grounds.

The survey found that if a tenant complied fully with the lease agreement, tenancy legislation, paid their rent and looked after the property, whilst enjoying safe and quiet enjoyment of the property, the property owner would not evict the tenant for no reason.

It has always been the case for property investors to keep tenants on as long as it works for both parties with the vast majority of investors renewing leases at the end of fixed term tenancies.

Investors need certainty

An investment property is a costly, risky, and uncertain endeavour for Australians to take on. The financial significance means surety in terms of the quality of tenant, the length and security of a lease, and the care and maintenance of the home are highly regarded.

Changes to how leases work, such as prohibiting No Grounds Evictions, risk rendering almost pointless the negotiated, binding legal agreements between landlords and tenants.

Parties enter into a lease under mutually agreed terms. This tried and tested method has served the private rental market well for decades. Governments across the country are now seeking to intervene via legislation to not only alter the terms of that contractual agreement but, in some instances, retrospectively enforce new rules causing further damage to investor confidence. A recent example is the implementation of 12-month rent increase limits on investment properties by the Queensland Government, which have been applied retrospectively to the legislation.

PIPA urges the NSW Government to avoid making similar missteps when it comes to fundamentally altering the function of a lease – especially removing so-called ‘no grounds’ evictions.

The ability for a landlord to end a tenancy for any reason applies to periodic or ‘rolling’ leases and requires at least 90 days’ notice to be given. This is a fair and reasonable arrangement that honours the very nature of such fluid arrangements.

Fixed-term lease agreements provide certainty for all parties. Periodic tenancies by their nature have no set end date and give unequal power to tenants, who typically make use of not being locked in for a certain duration of time.

Removing the ability for landlords to bring a periodic lease to an end, with a reasonable period provided, is an alarming recommendation.

No landlord seeks to remove a tenant for no good reason. There are often myriad reasons that a lease ends, from an unsuitable tenant to a change in circumstances or the need to make major improvements to a dwelling.

A good tenant and a good landlord will maintain a secure arrangement for as long as possible. It is in everyone’s best interests.

The perception that somehow landlords have the upper hand and abuse their ‘power’ is not just baseless given the commercial considerations, but it is unsupported when looking at the available statistics.

The latest data available in the NSW Civil and Administrative Tribunal Annual Report for 2022-23 shows 31,758 applications were received by the tribunal regarding tenancy matters. That is a considerably small number when compared to the total size of the state’s rental pool. According to the Australian Bureau of Statistics, about two million people rent a home in the private market in NSW.

Analysis several years ago by The Sydney Morning Herald found about 70 per cent of cases were brought by landlords in instances of unpaid rent or damage.

PIPA works primarily with everyday property investors however it also partners with property managers and other affiliated professionals who deal directly with tenants. It is PIPA’s observation that the exposure given to acrimonious dealings between landlords and tenants is disproportionate. The perception of some kind of David and Goliath battle simply does not reflect facts. What it does do is encourage unfair and detrimental policies.

On the overwhelmingly rare occasions when things do go wrong, there are rigorous safeguards in place for tenants. They have at their disposal a raft of stringent legislative measures as well as the services of the NSW Civil and Administrative Tribunal to arbitrate disputes.

As previously illustrated, rapidly rising rental prices has not been the norm over the past decade pre-COVID. Exceptional circumstances, the unintended consequences of emergency measures, a slump in supply and surging demand are to blame for the rent crisis.

Comments on the NSW Government survey Residential Tenancies Amendment (Prohibiting No Grounds Evictions) Bill 2024

With respect to the NSW Government survey on Prohibiting No Grounds Evictions, PIPA offers the following the insights:

- It is unreasonable to put a prescribed minimum time to family members occupying the premises, if circumstances change prior to this time, it makes sense for the property to go back onto the market to meet the demands of renters.
- It is unreasonable to implement a prescribed minimum uninhabitable time for renovating, if the renovation takes less time, then it makes sense for the property to be leased back to reduce vacancy and meet the rental supply demands.
- It is unreasonable to dictate the timeframe the property can be used as a residence. If circumstances change, it makes sense for the property to be leased back to reduce vacancy and meet the rental supply demands.
- It is unreasonable for a Minister to determine “other reasons” as this means the property manager loses control of a property that they legally required to manage on behalf of their investor client.
- A requirement for landlords to show evidence that they have reasonable grounds before terminating a lease as well as a penalty scheme for those who do not use the premise for the reason stated is not effective and will further clog us tribunal disputes. Indeed, providing evidence and a penalty scheme will further drive NSW investment property owners to sell up. Circumstances may change and the property owner should not be penalised for this. The majority of property investors own one or two properties and need to make their assets financially sound.

How do we ease the rental crisis?

The broad consensus among economists and property investment professionals is clear – the issue of housing affordability will not be tackled until the supply of dwellings dramatically increases.

Action at a Commonwealth level is admirable but fails to adequately address the long-term issue of housing supply. The target of building 1.2 million new dwellings in five years barely meets the current annual shortfall of new homes needed, let alone the projected increase in demand for dwellings. There is also little to guarantee how many of those properties will be affordable.

The use of large-scale build-to-rent developments, funded by corporate interests and superannuation funds, will add much-needed supply. However, it will take many years to see a meaningful impact given the long lead times needed for planning and construction. On top of that, the construction sector at present is not in a position to move swiftly on many, if any, projects.

While there are already incentives for investors on depreciation for new builds, there should be further incentives to buy and build new properties for property investors.

Mum and dad investors have long supported housing in the new property space with new dwelling supply one of the key solutions to the current rental crisis.

In PIPA's assessment, quickly incentivising everyday investors to get into the private rental market is the most efficient and immediate way of easing pressure – not additional anti-investor polices that will drive even more landlords out of the market and prolong the rental crisis for many years to come.